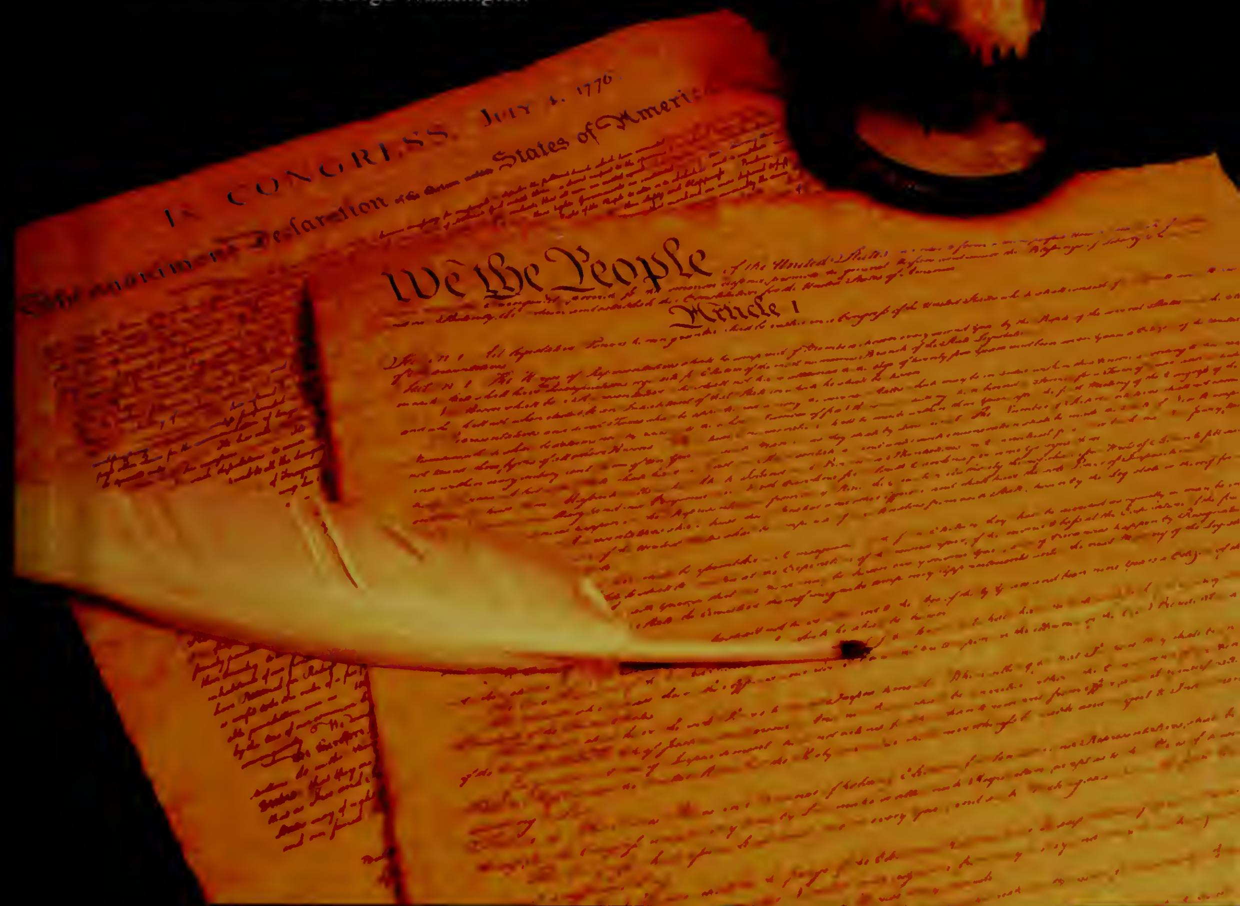
THE MAKING OF AMERICA

THE SUBSTANCE AND MEANING OF THE CONSTITUTION

The power under the Constitution will always be in the People.
– George Washington



Including a Clause by Clause Explanation by the Founding Fathers

THE MAKING OF AMERICA

Digitized by the Internet Archive
in 2010

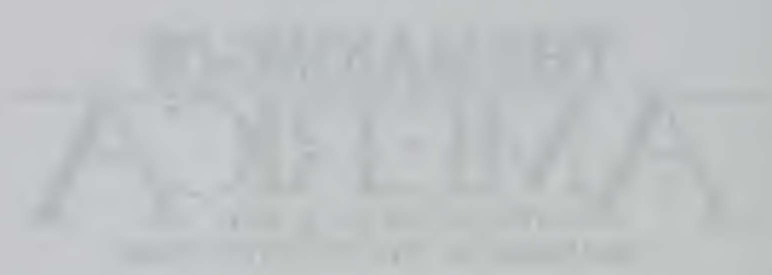
http://www.archive.org/details/makingofamericas00skou

THE MAKING OF AMERICA

THE SUBSTANCE AND MEANING OF THE CONSTITUTION

W. Cleon Skousen

The National Center for Constitutional Studies



The Making of America: The Substance and Meaning of the Constitution
Copyright © 1985 by W. Cleon Skousen
Copyright © 1991, 2007 by the National Center for Constitutional Studies
Published by the National Center for Constitutional Studies

All rights reserved. No part of this book may be reproduced in any form or by any electronic or mechanical means including information storage and retrieval systems without permission in writing from the publisher, except by a reviewer who may quote brief passages in a review.

Library of Congress Cataloging in Publication Data

Skousen, W. Cleon (Willard Cleon), 1913-2006
The making of America.
Bibliography: p.777
Includes index.
1. United States–Constitutional history. I. Title.
KF4541.855 1985 342.73'029 85-8875
ISBN 0-88080-017-8 347.30229

Printed in the United States of America
Third edition, revised 2007
April 2009 printing

ISBN 10: 0-88080-017-8
ISBN 13: 978-0-88080-017-4

National Center for
Constitutional Studies
www.nccs.net

Dedicated to
that generation of resolute Americans
we call the Founding Fathers

They created the first free people to survive as a nation in modern times.

They wrote a new kind of Constitution, which is now the oldest in existence.

They built a new kind of commonwealth designed as a model for the whole human race.

They believed it was thoroughly possible to create a new kind of civilization, providing freedom, equality, and justice for all.

They envisioned a vast commonwealth of freedom which would encompass all North America, and accommodate, as John Adams said, "two to three hundred million freemen."

They created an expansive new cultural climate that gave eagle's wings to the human spirit.

They encouraged exploration and technology to reveal the secrets of the universe.

They built a free-enterprise culture to promote millions of jobs and unprecedented prosperity.

They invented, for the world as well as themselves, a whole new formula for happiness and success.

They offered the human race a potential future filled with the ultimate hope of the human heart—a world of universal freedom, universal prosperity, and universal peace.

CONTENTS

Preface ix
Acknowledgments xi
Federal and State Convention Participants, 1787–88 xv
Introduction: Freedom — An Idea Whose Time Has Come 1

Part One: The Making of the Constitution

1 The Man Who Discovered America's Freedom Formula 15
2 Discovery of the Ancient Principles 41
3 The Revolutionary War Is Fought Under a Weak Constitution 65
4 General Washington's Worst Ordeal 87
5 The Need for a Miracle 111
6 The Miracle at Philadelphia 133
7 The Founders Invent a New System of Political Science 165
8 Prosperity Economics 203
9 The Baptism of Fire 223

Part Two: Article I — The Legislative Branch

10 The Power Plant of the Constitution 249
11 The House of Representatives 263
12 The Senate 289
13 The Organization of Congress 321
14 The Legislative Process 353
15 The Powers Granted to Congress 371
16 Commerce, Naturalization, and Bankruptcy 399
17 Money, Post Offices, and Copyrights and Patents 419
18 The War Powers and the Remaining Enumerated Powers 439
19 Restraints on Congress 465
20 Restraints on the States 491

Part Three: Article II — The Executive Branch

21 The Most Powerful Political Office in the World 507
22 The Powers and Responsibilities of the President 537

Part Four: Article III — The Judicial Branch

23 The Most Powerful Judiciary in the World 569
24 Jurisdiction of the Federal Courts 583
25 Appellate Powers, the Common Law Jury, and Treason 611

Part Five: Articles IV Through VII — Other Provisions

26 The Union of States and the Amendment Process 629
27 The Finishing Touches 653

Part Six: Amendments to the Constitution

28 The Bill of Rights and the First Amendment 673
29 Amendments Two Through Twelve 693
30 Amendments Thirteen Through Sixteen 719
31 Amendments Seventeen Through Twenty-seven................ 745

Conclusion: Striving for a Higher Level of Civilization 765
Bibliography 777
The Declaration of Independence 781
The Constitution of the United States 785
Constitutional Index 799
Subject Index 853

PREFACE

This book was written to fill a special need.

For many years in the United States there has been a gradual drifting away from the Founding Fathers' original success formula. This has resulted in some of their most unique contributions for a free and prosperous society becoming lost or misunderstood. Therefore, there has been a need to review the history and development of the making of America in order to recapture the brilliant precepts which made Americans the first free people in modern times.

It seems highly significant that there does not seem to have been any other time in recent centuries when circumstances were so favorably disposed to revealing the correct principles for a free and prosperous society as during the Revolutionary War period and the years immediately following. The fact that the Founders perceived and captured these precepts in the structure of a written constitution is a lasting credit to their diligence and concern for future generations. It would be a disastrous loss to all humanity if these great principles were allowed to become neglected or lost.

The National Center for Constitutional Studies was created in order to revive and popularize those original American concepts in all of their initial brilliance and vitality. The very fact that many of them are becoming obscure and misunderstood simply emphasizes the urgency and importance of the task.

The study for *The Making of America* actually extended over a period of more than forty years, but an organized effort to present this information in a published text has been a concerted endeavor of the past fourteen years. I am very grateful to all of those who have assisted so generously to bring this work into final fruition.

Very early in this study it became apparent that the greatly admired tapestry of the United States Constitution consisted of many more individual gold and silver threads than most scholars had identified. Altogether there are 287 of these threads in the Constitution and its amendments. Each one of these creates a right for some element of the American society. As each provision is set forth in the text, we have identified the right connected with it. We have also carefully examined each of these provisions to determine why the Founders considered it to be of substantive importance. This made it necessary to glean

from the voluminous writings of the Founders their particular comments concerning each of these precepts.

Some of these provisions have been slightly paraphrased rather than quoted from the actual text of the Constitution. This has been done in order to provide a stronger emphasis of the concept or to state it more clearly. In each case, however, the constitutional paragraph from which it is taken is cited.

It should also be mentioned that certain statements from the Founders are presented in the third person. This is because these were taken from James Madison's notes on the Constitutional Convention debates, which often provide summaries of what was said rather than actual quotations.

Where important subjects are covered (such as the "ancient principles" of the Anglo-Saxons, a summary of the Articles of Confederation, or the problems of slavery in America), we have devoted considerable space to the subject in order that each one of these might be better understood from the Founders' perspective.

It will be observed that many new insights are provided in the writings of the Founders for the solution of serious economic and political problems plaguing the world today. It is felt that a study of *The Making of America* can be of lasting value to all who have a serious concern for the general welfare of not only America but all mankind.

ACKNOWLEDGMENTS

The National Center for Constitutional Studies (NCCS), is a non-profit education foundation which was created to provide text materials and specialized courses in Constitutional studies for schools, public officials, the members of Congress, and the congressional staff. It also presents Constitutional seminars across the nation. NCCS published a monthly magazine, *The Constitution*, from 1985-1988. The center currently publishes a monthly newsletter and past newsletters can be found on the NCCS web site at www.nccs.net.

Funding for NCCS is provided entirely by private contributions.

The work for this particular volume has extended over a period of more than fourteen years. The author is immensely grateful to all those who have helped with funding and collaborated in so many special ways to bring this work to completion.

The funding for the project was originally initiated by Mrs. Olive White Garvey and her son, Willard Garvey, of the Garvey Foundation, Wichita, Kansas. These funds were later supplemented by substantial donations from the following friends:

Bert N. Smith
Ogden, Utah

Nelson Bunker Hunt
Dallas, Texas

Orvin P. Nielsen
Portland, Oregon

Rita Miller
Colton, California

Frank and Arline Talley
Spanish Fork, Utah

Wayne Baker
Freedom, Wyoming

Conrad Maxfield
Salt Lake City, Utah

David Stedman
Asheboro, North Carolina

Wilson "Jody" Humber
Paradise Valley, Arizona

Lester Pearce
Mesa, Arizona

Dean D. Baxter
Houston, Texas

Richard McLelland
Salt Lake City, Utah

Robert W. Duggan
Santa Barbara, California

Evan Mecham
Glendale, Arizona

Sidney M. Horman
Salt Lake City, Utah

Alice and David Wilkinson
Salt Lake City, Utah

Owen C. "Chris" Nielsen
Portland, Oregon

Dr. Bo Hi Pak
New York City

Dave True
Casper, Wyoming

W.E. "Bill" Mussman
Hillsborough, California

J.P. "Pat" Morgan
Fredericksburg, Texas

Bob Perry
Houston, Texas

Evan Bullock
Provo, Utah

Joe and Marta McPhearson
Winter Haven, Florida

Lorraine and Lane Wilcken
St. George, Utah

William H. Doughty
Rolling Hills, California

Lyle Cook
Fresno, California

William Boeing
Seattle, Washington

Jack Simplot
Caldwell, Idaho

Terrell Woodmansee, M.D.
Bountiful, Utah

C.L. "Butch" Otter
Caldwell, Idaho

Herman Zobrist
Las Vegas, Nevada

Don Buehner
Heber, Utah

Douglas Aiton
Ontario, Canada

Joseph Coors
Golden, Colorado

Russell Taylor, M.D.
Denver, Colorado

John S. Berge
Denver, Colorado

Don "Bud" Ozmun
Logan, Utah

John Phillips, Jr.
Phoenix, Arizona

It is impossible for me to adequately express my heartfelt appreciation to the members of the national board of trustees of NCCS listed below. They have not only made major financial contributions, but have donated an abundance of time and talent to bring NCCS to its present level of performance. They have worked without compensation and often paid their own expenses to make this important work a success.

W. Cleon Skousen, *president and founder of the National Center for Constitutional Studies.*

Glenn J. Kimber, *NCCS vice-president and chairman of the executive committee of the board of trustees.*

John C. Armor, *attorney specializing in constitutional law, with offices in Washington, D.C., and Baltimore, Maryland.*

Mark A. Benson, *president of Castlewick Collection; regional manager for Saladmaster Corporation.*

Albert P. Blaustein, *professor of constitutional law, Rutgers University School of Law, Camden, New Jersey.*

J. Douglass Bowers, *president of Bowers Construction Company, Salt Lake City, Utah.*

Evan J. Bullock, *former chairman of the board of Brymar Developments, Ltd., in Canada.*

Gary Donahue, *ordained Baptist minister, Philadelphia, Pennsylvania; senior instructor at NCCS.*

William H. Doughty, *president of Quantum Financial Corporation; chairman of the board of Western Investment Counseling, Inc.; author of* The Doughty Report.

Robert W. Duggan, *owner of a successful investment and stock company, Santa Barbara, California.*

Kerry Freeman, *investment consultant, president of Capitalist Publishing Company, Tulsa, Oklahoma.*

E. P. "Jack" Holladay, *president of a business machines and office supply company, Idaho Falls, Idaho.*

Sidney M. Horman, *president of Horman Construction Company, Salt Lake City, Utah.*

Ronald Mann, *former assistant to President Ronald Reagan; now deputy director of the Commission on the Bicentennial of the United States Constitution.*

Conrad G. Maxfield, *owner and manager of Salt Lake Desk Company.*

Rita S. Miller, *former president of Miller Honey Company, Colton, California.*

Orvin P. Nielsen, *land developer and mobile home park operator, Portland, Oregon.*

Alan M. Neves, *engineer, inventor, and businessman, Ogden, Utah.*

Alton Ochsner, Jr., *professor of surgery at Tulane Medical School; chairman of the Americanism Forum.*

Bert N. Smith, *owner of Smith and Edwards Company; operator of several large ranches in Nevada.*

David Stedman, *president of Stedman Corporation, headquartered in Asheboro, North Carolina.*

Frank Talley, *president of Talley Corporation, Spanish Fork, Utah.*

Terrell R. Woodmansee, M.D., *U.S. Air Force command surgeon for twenty-two years; now medical director for the U.S. Army in Utah.*

Special thanks must also go to the several thousand supporters who make regular contributions to NCCS each month.

The support team which contributed so much to this book included the research and editing skills of Andrew M. Allison, M. Richard Maxfield, Jay A. Parry, Lane Johnson, L. Edward Robbins, Warren W. Hardy, W. Glen Fairclough, Jr., R. Stephen Pratt, K. DeLynn Cook, and Ronald Mann.

In addition, an outstanding management team and working staff put in long hours of valiant service in addition to their regular assignments, sometimes at night and on Saturdays, in order to publish this book. This great team has been headed by Glenn J. Kimber, Bryan W. Neville, Harold D. Skousen, and Richard Sutter. The staff has included Lisa Carpenter, Dan Christensen, Dan Dimick, Helga Fleischer, Herbert Gustafson, Susan Hurd, Robert Johnson, Julianne Kimber, Wayne Kimber, Jean Marshall, Orvin and Rosalie Nielsen, Lynda Richards, Shirley Rickett, Vern Saunders, David Skousen, Brent Trimble, Donna Webb, and Ed and Lou White.

This author is particularly indebted to his wife, Jewel, who has been such an outstanding helpmate as editor, proofreader, and much-needed morale builder for a project of such prolonged duration as this one.

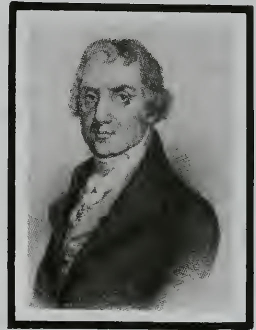
To this multitude of distinguished friends and supporters, I express my everlasting appreciation and gratitude.

Members of the Constitutional Convention step forward to sign the Constitution on September 17, 1787. George Washington, president of the convention, stands behind the desk.

FEDERAL AND STATE CONVENTION PARTICIPANTS, 1787-88

Members of the Constitutional Convention

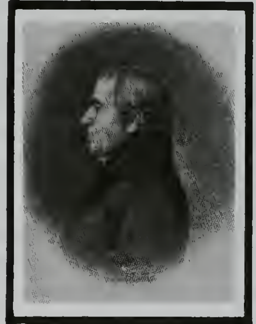
The following are short biographical sketches of the representatives to the Constitutional Convention of 1787. The quoted extracts are from "Characters in the Convention of the States Held at Philadelphia, May 1787," by Major William Pierce, delegate to the Convention from Georgia.



Baldwin, Abraham (1754–1807), delegate from Georgia.

College, Yale; minister, lawyer, legislator, chaplain in the Revolutionary War; Georgia House of Representatives; introduced plan for educational system, including America's oldest state university, the University of Georgia; also chairman of its board of trustees; Continental Congress; U.S. House of Representatives; U.S. Senate.

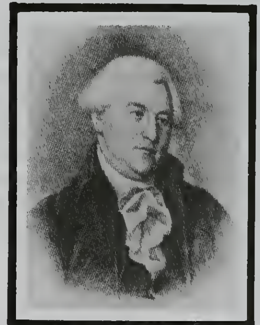
"A gentleman of superior abilities, and joins in a public debate with great art and eloquence. Having laid the foundation of a complete classical education at [Yale] College, he pursues every other study with ease. He is well acquainted with books and characters, and has an accommodating turn of mind, which enables him to gain the confidence of men, and to understand them. He is a practicing attorney in Georgia, and has been twice a member of Congress."



Bassett, Richard (1745–1815), delegate from Delaware.

Captain in Revolutionary War; Delaware Legislature; member of Delaware's Constitutional Convention; U.S Senator; chief justice, Delaware Court of Common Pleas; governor; federal judge; active Methodist layman.

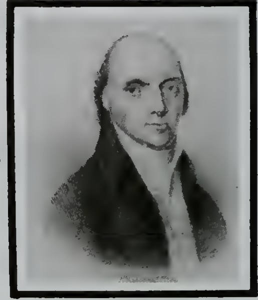
"A religious enthusiast, lately turned Methodist, and serves his country because it is the will of the people that he should do so. He is a man of plain sense, and has modesty enough to hold his tongue. He is a gentlemanly man, and is in high estimation among the Methodists."



Bedford, Gunning, Jr. (1747–1812), delegate from Delaware.

College, Princeton; Delaware State Senate; president, board of trustees of Wilmington Academy and University of Delaware; member of Continental Congress; attorney general of Delaware; United States judge for Delaware.

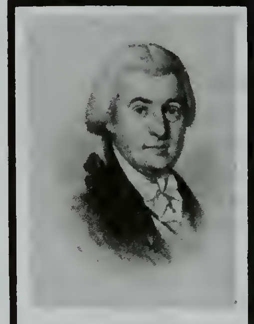
"Was educated for the Bar, and in his profession I am told, has merit."



Blair, John (1732–1800), delegate from Virginia.

College, William and Mary; member of Virginia House of Burgesses; president, King's Council; member of convention that wrote first constitution of Virginia in 1776; member of Court of Appeals in Virginia; chancellor of Virginia; member of first Supreme Court of U.S.

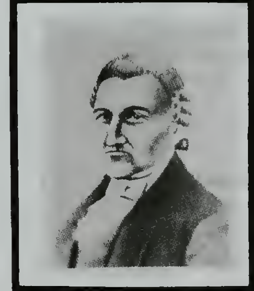
"One of the most respectable men in Virginia, both on account of his family, as well as fortune. He was one of the judges of the Supreme Court in Virginia, and acknowledged to have a very extensive knowledge of the laws.... No orator, but his good sense, and most excellent principles, compensate for other deficiencies."



Blount, William (1749–1800), delegate from North Carolina.

Served in Revolutionary War; North Carolina House of Commons; member of Continental Congress; territorial governor and superintendent of Indian Affairs in what is now called Tennessee; president of convention that drafted Tennessee's first constitution; U.S. Senator from Tennessee one year, then expelled; one of the founders of University of Tennessee.

"Is a character strongly marked for integrity and honor. He has been twice a member of Congress, and in that office discharged his duty with ability and faithfulness.... He is plain, honest, and sincere."



Brearley, David (1745–1790), delegate from New Jersey.

College, Princeton, honor man of his class; served in Continental Army; helped write New Jersey's first constitution; chief justice of the State Supreme Court; judge of the U.S. District Court of New Jersey.

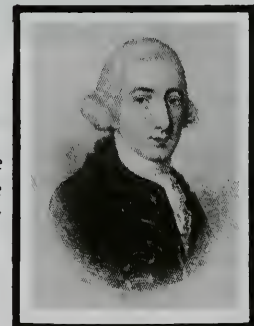
"A man of good, rather than of brilliant parts. He was a judge of the Supreme Court of New Jersey, and is very much in the esteem of the people.... As a man he has every virtue to recommend him."

Broom, Jacob (1752–1810), delegate from Delaware.

Surveyor, engineer, postmaster, Board of the College of Delaware.

"A plain, good man.... "

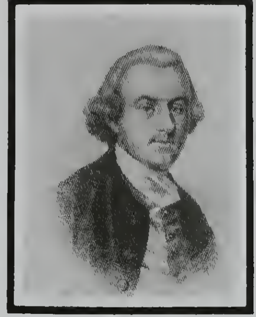
(Portrait not available)



Butler, Pierce (1744–1822), delegate from South Carolina.

Officer in English army at age 12, later a major; South Carolina rice and indigo planter; adjutant general, South Carolina; member of South Carolina Legislature; delegate, Continental Congress; U.S. Senator until 1806; director of U.S. Mint in Philadelphia.

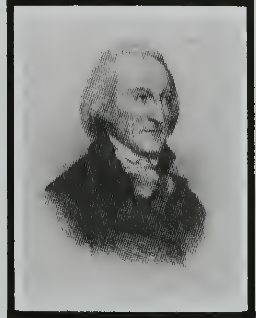
"A character much respected for the many excellent virtues which he possesses. He ... is a gentleman of fortune, and takes rank among the first in South Carolina. He has been appointed to Congress, and is now a member of the Legislature of South Carolina."



Carroll, Daniel (1730–1796), delegate from Maryland.

Member of Continental Congress; signed Articles of Confederation; served in State Senate of Maryland and U.S. House of Representatives; one of three commissioners to plan Washington, D.C.; one of two Catholics to sign Constitution (Thomas Fitzsimons was the other).

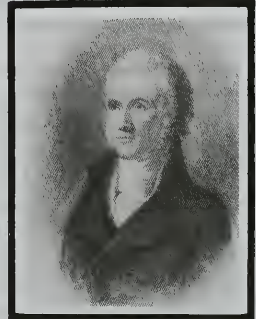
"A man of large fortune, and influence in his State. He possesses plain, good sense, and is in the full confidence of his countrymen."



Clymer, George (1739–1813), delegate from Pennsylvania.

Businessman; captain in Revolutionary War; member and first treasurer of Continental Congress; signed Declaration of Independence; Pennsylvania Legislature; U.S. House of Representatives; head of excise tax department; president, Philadelphia Bank; president, Academy of Fine Arts in Philadelphia.

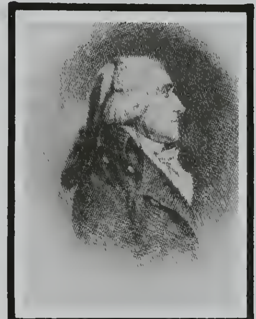
"A lawyer of some abilities; he is a respectable man, and much esteemed."



Davie, William (1756–1820), delegate from North Carolina.

College, Princeton University; major in Continental army; lawyer; North Carolina Legislature; Ratification Convention of North Carolina; one of founders of University of North Carolina; governor, North Carolina.

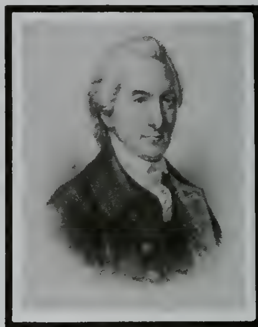
"A lawyer of some eminence in his State. He is said to have a good classical education, and is a gentleman of considerable literary talents.... His opinion was always respected."



Dayton, Jonathan (1760–1824), delegate from New Jersey.

Captain in Continental Army; three terms in New Jersey Legislature; Continental Congress; member and Speaker, U.S. House of Representatives; U.S. Senate.

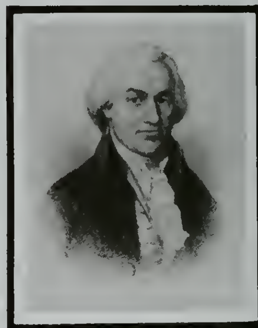
"A young gentleman of talents, with ambition to exert them. He possesses a good education and some reading; he speaks well.... There is an honest rectitude about him that makes him a valuable member of society, and secures to him the esteem of all good men."



Dickinson, John (1733–1808), delegate from Delaware.

College, Temple, London. Penman of the Revolution; petition writer; Continental Congress; wrote *Letters from a Pennsylvania Farmer*; member of Stamp Act Congress of 1765; refused to sign the Declaration of Independence but became a brigadier general in the Revolutionary War; president of executive council that governed Delaware; third president of council which governed Pennsylvania; chairman of the board of trustees, Dickinson College; helped write constitution for Delaware in 1798; helped write Articles of Confederation.

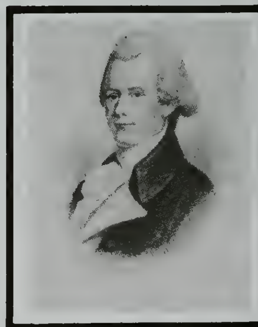
"Famed through all America, for his *Farmer's Letters;* he is a scholar, and said to be a man of very extensive information.... He is ... a good writer and will be ever considered one of the most important characters in the United States."



Ellsworth, Oliver (1745–1807), delegate from Connecticut.

Doctor of Laws from Yale, Princeton, and Dartmouth; called away from Convention because of judicial duties so did not sign the Constitution; member of Committee of Five that wrote the near final version; lawyer, judge, legislator, diplomat; prosecuting attorney; member of governor's council; real estate developer; member of Continental Congress; U.S. Senator; Chief Justice of the Supreme Court; when on diplomatic assignment helped divert war with France and helped encourage Napoleon to take Louisiana Territory, which led to sale to the United States.

"A judge of the Supreme Court in Connecticut; he is a gentleman of a clear, deep, and copious understanding; eloquent, and connected in public debate; and always attentive to his duty.... A man much respected for his integrity, and venerated for his abilities."



Few, William (1748–1828), delegate from Georgia. Also member of Georgia Ratification Convention.

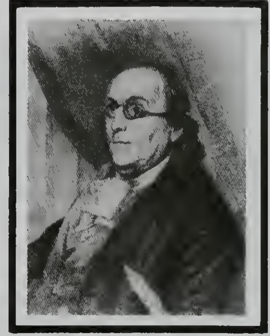
Helped write Georgia's first constitution; member of first general assembly; judge; Georgia House of Representatives and on executive council; Continental Congress; on committee for Philadelphia convention; U.S. Senate; circuit judge in Georgia; member of New York Legislature; United States Commissioner of Loans; bank director and president.

"Possesses a strong natural genius, and from application has acquired some knowledge of legal matters; he practices at the Bar of Georgia, and speaks tolerably well in the legislature. He has been twice a member of Congress, and served in that capacity with fidelity to his State, and honor to himself."

Fitzsimons, Thomas (1741–1811), delegate from Pennsylvania.

One of two Catholics that signed (Daniel Carroll was the other); businessman, merchant, ship owner; fought in Revolutionary War; Continental Congress; Pennsylvania Assembly; U.S. Representative; director, University of Pennsylvania, bank director, president of insurance company.

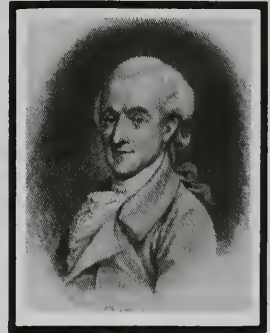
"A merchant of considerable talents, and speaks very well, I am told, in the Legislature of Pennsylvania."



Franklin, Benjamin (1706–1790), delegate from Pennsylvania.

Honorary Doctor of Laws from Yale and Harvard; honored by many great universities and learned societies of America, England, and France; deputy postmaster general; fathered plan for union of colonies which led to Articles of Confederation—which led to Constitution; signed Declaration of Independence; scientist; philosopher; printer; diplomat to England and France; writer; member of Continental Congress; convinced France to aid American Revolution; helped draft Treaty of Peace of the war; founder of University of Pennsylvania; inventor.

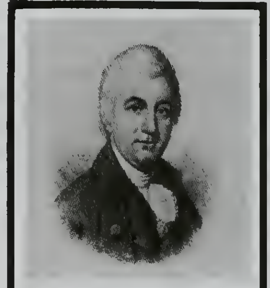
"Well known to be the greatest philosopher of the present age; all the operations of nature he seems to understand, the very heavens obey him, and the clouds yield up the lightning to be imprisoned in his rod. ... He is... a most extraordinary man.... He is 82 years old, and possesses an activity of mind equal to a youth of 25 years of age."



Gerry, Elbridge (1744–1814), delegate from Massachusetts.

College, Harvard; signed Declaration of Independence and Articles of Confederation; member, Massachusetts Colonial Legislature; member of Continental Congress; patriot, businessman, financer; helped develop American navy; U.S. Congress; special envoy to France; governor of Massachusetts; Vice President under Madison.

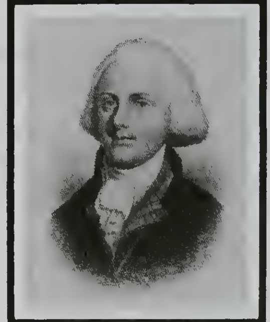
"Mr. Gerry's character is marked for integrity and perseverance. He is a hesitating and laborious speaker; possesses a great degree of confidence and goes extensively into all subjects that he speaks on, without respect to elegance or flower of diction. He is connected and clear in his arguments, conceives well, and cherishes as his first virtue, a love for his country. Mr. Gerry is very much of a gentleman in his principles and manners; he has been engaged in the mercantile line and is a man of property."



Gilman, Nicholas (1755–1814), delegate from New Hampshire.

Fought in Revolutionary War; member of Continental Congress; U.S. Representative; U.S. Senator.

"Modest, genteel, and sensible... there is something respectable and worthy in the man."



Gorham, Nathaniel (1748–1796), delegate from Massachusetts.

Merchant; Colonial Legislature of Massachusetts; helped write Massachusetts Constitution; member of Massachusetts Senate; member and president of Continental Congress.

"A merchant in Boston, high in reputation, and much in the esteem of his countrymen. He is a man of very good sense.... He has been president of Congress and three years a member of that body."

Hamilton, Alexander (1757-1804), delegate from New York.

College, King's College (now Columbia University); colonel in Revolutionary War; Washington's staff lawyer; member of Continental Congress; delegate to Annapolis Conference; wrote 51 of 85 *Federalist Papers;* Secretary of Treasury; founder of *New York Post,* city of Patterson, N.J., and one of New York's first banks.

"Colonel Hamilton is deservedly celebrated for his talents. He is a practitioner of the law, and reputed to be a finished scholar. To a clear and strong judgment he unites the ornaments of fancy, and whilst he is able, convincing, and engaging in his eloquence the heart and head sympathize in approving him. ... Colonel Hamilton requires time to think; he enquires into every part of his subject with the searchings of philosophy, and when he comes forward he comes highly charged with interesting matter; there is no skimming over the surface of a subject, he must sink to the bottom to see what foundation it rests on."

Houston, William Churchill (c. 1746-1788), delegate from New Jersey.

College, Princeton; captain of militia in Revolutionary War; member of state General Assembly; professor; lawyer; member of Continental Congress; delegate to Annapolis Convention.

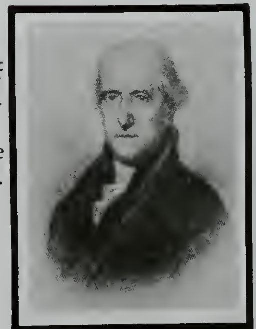
(Portrait not available)

Houstoun, William (1755-1813), delegate from Georgia.

College, in England; lawyer; member of Continental Congress.

"A gentleman of family, ... of an amiable and sweet temper, and of good and honorable principles."

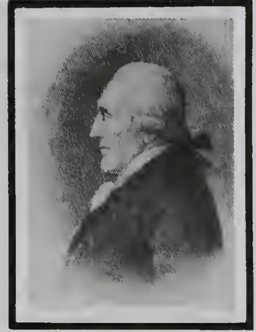
(Portrait not available)



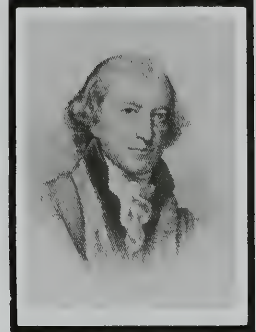
Ingersoll, Jared (1749-1822), delegate from Pennsylvania.

College, Yale; Temple in London, England; lawyer; member of Continental Congress; attorney general for Pennsylvania; U.S. attorney; judge.

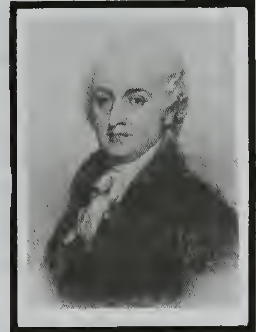
"A very able attorney, and possesses a clear legal understanding. He is well educated in the classics and is a man of very extensive reading. Mr. Ingersoll speaks well and comprehends his subject fully."



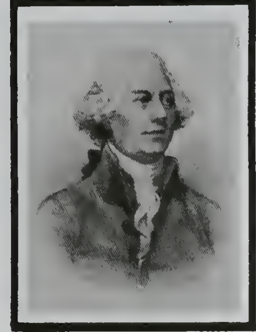
Jenifer, Daniel of St. Thomas (1723–1790), delegate from Maryland.
Member of Alexandria Conference; state senator; member of Continental Congress.
"A gentleman of fortune in Maryland, . . . once served as an aide-decamp to Major General Lee."



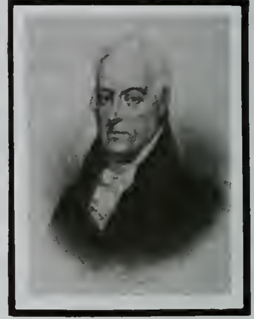
Johnson, William Samuel (1727–1819), delegate from Connecticut.
College, Yale and Harvard, with honorary doctorate from Yale; president, King's College (now Columbia University); lawyer, educator, judge, religious leader; member of colonial House of Representatives, Stamp Act Congress, Governor's Council, Supreme Court of Connecticut; commissioner to England; Continental Congress; on committee to write final draft of Constitution; U.S. Senator.
"A character much celebrated for his legal knowledge; he is said to be one of the first classics in America, and certainly possesses a very strong and enlightened understanding.
"He is eloquent and clear, always abounding with information and instruction."



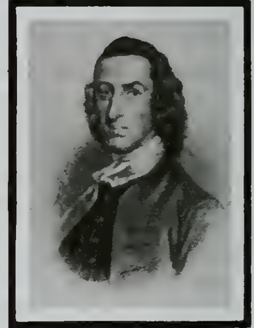
King, Rufus (1755–1827), delegate from Massachusetts.
College, Harvard; aide to General Sullivan in Revolutionary War; lawyer; Massachusetts Legislature; member of Continental Congress; U.S. Senator from New York; minister to England.
"A man much distinguished for his eloquence and great parliamentary talents. He was educated in Massachusetts, and is said to have good classical as well as legal knowledge. He has served for three years in the Congress of the United States with great and deserved applause, and is at this time high in the confidence and approbation of his countrymen. . . . He may, with propriety, be ranked among the luminaries of the present age."



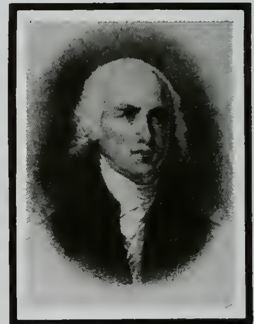
Langdon, John (1741–1819), delegate from New Hampshire.
Continental Congress; shipbuilder, seaman; fought in Revolutionary War; judge; state representative; state senator; governor; U.S. Senator.
"A man of considerable fortune, possesses a liberal mind and a good, plain understanding."



Lansing, John, Jr. (1754-1829), delegate from New York.
Lawyer; member of Continental Congress; aide-de-camp to Genera Schuyler in Revolutionary War; member, New York Assembly; member of state ratifying convention; chief justice, state supreme court; chancellor of New York.
"A man of good sense, plain in his manners, and sincere in his friendships."

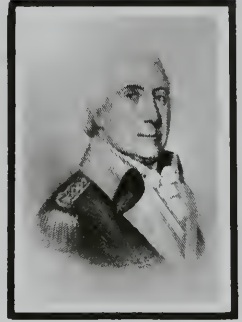


Livingston, William (1723–1790), delegate from New Jersey.
College, Yale; governor; editor of *Independent Reflector*, N.Y.C.; poet, lawyer, member of Continental Congress; brigadier general in Revolutionary War.
"A man of the first rate talents ... equal to anything, from the extensiveness of his education and genius. His writings teem with satire and a neatness of style."



Madison, James (1751–1836), delegate from Virginia.
College, Princeton; "Father of the Constitution," recordkeeper of the Constitutional Convention; member, Committee of Safety; helped write Virginia's first constitution; member, Virginia House of Delegates; member, Virginia's Executive Council; Continental Congress; Virginia Legislature; trade conference at Annapolis; at Constitutional Convention; member of Committee on Style and Revision; wrote 29 of 85 *Federalist Papers;* leader of U.S. House of Representatives; father of first ten amendments, "The Bill of Rights"; wrote Virginia Resolves; Secretary of State under Jefferson; fourth President of the United States; director, University of Virginia; last of signers of Constitution to die.

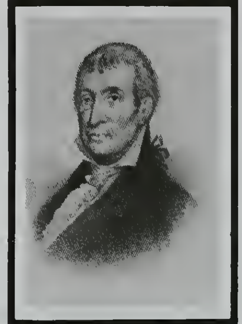
"A character who has long been in public life; and what is very remarkable, every person seems to acknowledge his greatness. He blends together the profound politician, with the scholar. In the management of every great question he evidently took the lead in the Convention, and though he cannot be called an orator, he is a most agreeable, eloquent, and convincing speaker. From a spirit of industry and application which he possesses in a most eminent degree, he always comes forward the best informed man of any point in debate. The affairs of the United States, he perhaps, has the most correct knowledge of any man in the Union. He has been twice a member of Congress, and was always thought one of the ablest members that ever sat in that council."



Martin, Alexander (1740-1807), delegate from North Carolina.

College, Princeton; member of State Assembly and State Senate; colonel in Revolutionary War; governor; U.S. Senator.

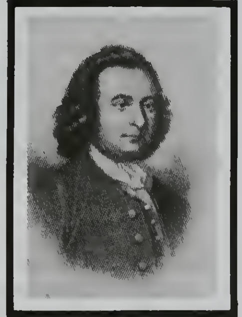
"Lately governor of North Carolina, which office he filled with credit. He is a man of sense, and undoubtedly is a good politician, but he is not formed to shine in public debate, being no speaker."



Martin, Luther (1744–1826), delegate from Maryland.

College, Princeton; teacher, lawyer, attorney general; Continental Congress.

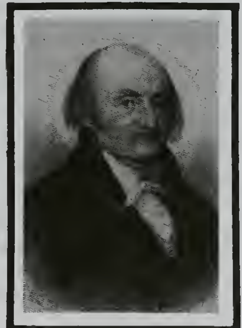
"Was educated for the bar and is attorney general for the State of Maryland. This gentleman possesses a good deal of information."



Mason, George (1725–1792), delegate from Virginia.

Lawyer; served in Virginia House of Burgesses; judge; member, Virginia Committee of Safety; helped draft Virginia State Constitution; author of Virginia "Bill of Rights"; delegate to Alexandria Conference.

"A gentleman of remarkable strong powers, and possesses a clear and copious understanding. He is able and convincing in debate, steady and firm in his principles, and undoubtedly one of the best politicians in America."



McClurg, James (c. 1746-1823), delegate from Virginia.

College, William and Mary, and university in Edinburgh; medical doctor; member of state Executive Council.

"Mr. McClurg is a learned physician.... It is certain that he has a foundation of learning, on which if he pleases, he may erect a character of high renown;... a gentleman of great respectability, and a fair and unblemished character."

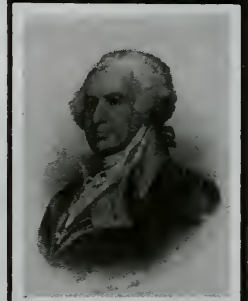
McHenry, James (1753–1816), delegate from Maryland.

Medical doctor; was in Medical Corps forces; staff of Lafayette; merchant; served in Maryland House of Delegates and Senate; Continental Congress; Secretary of War (directed the establishment of West Point); active church layman.

"Was bred a physician, but he afterwards turned soldier and acted as aide to General Washington, and deserves the honor which his country has bestowed on him."

Mercer, John Francis (1759–1821), delegate from Maryland.

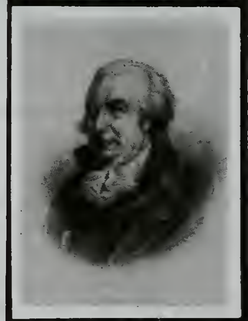
College, William and Mary; fought in Revolutionary War as a lieutenant; on staff of General Charles Lee; lawyer, member of Continental Congress; U.S. Representative; Maryland House of Delegates; governor.



Mifflin, Thomas (1744–1800), delegate from Pennsylvania.

College, University of Pennsylvania; president of Continental Congress; merchant; member and speaker of Pennsylvania Assembly; brigadier general in Revolutionary War; president, Pennsylvania Constitutional Convention; governor of Pennsylvania; Pennsylvania House of Representatives.

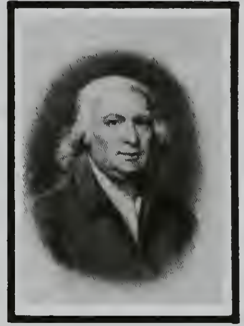
"Well known for the activity of his mind, and the brilliancy of his parts. He is well informed and a graceful speaker."



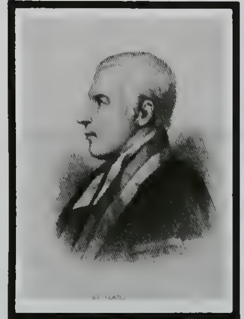
Morris, Gouverneur (1752–1816), delegate from Pennsylvania.

College, Columbia; lawyer, merchant; delegate to convention to write New York constitution; member of Continental Congress; Assembly of New York; leader in devising monetary system; signer of Articles of Confederation; on Committee of Style; wrote final draft of Constitution; first minister to France; U.S. Senator from New York; promoted Erie Canal.

"One of the geniuses in whom every species of talents combine to render him conspicuous and flourishing in public debate. He winds through all the mazes of rhetoric and throws around him such a glare, that he charms, captivates, and leads away the senses of all who hear him. With an infinite streak of fancy, he brings to view things, when he is engaged in deep argumentation, that render all the labor of reasoning easy and pleasing.... He has gone through a very extensive course of reading, and is acquainted with all the sciences. No man has more wit... than Mr. Morris. He was bred to the law, but I am told he disliked the profession and turned merchant."



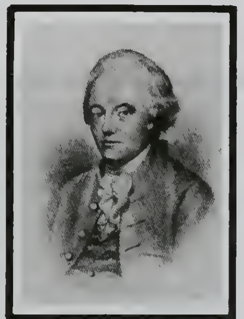
Morris, Robert (1734–1806), delegate from Pennsylvania.
Banker; financier of the Revolution; chairman, Committee of Safety; member of Continental Congress; signed Declaration of Independence and Articles of Confederation; superintendent of finance under Articles of Confederation; organized Bank of North America, the first incorporated bank in American history; offered Secretary of Treasury position by Washington, but declined; U.S. Senator.
"A merchant of great eminence and wealth; an able financier and a worthy patriot. He has an understanding equal to any public object, and possesses an energy of mind that few men can boast of. Although he is not learned, yet he is as great as those who are. I am told that when he speaks in the Assembly of Pennsylvania, that he bears down all before him."



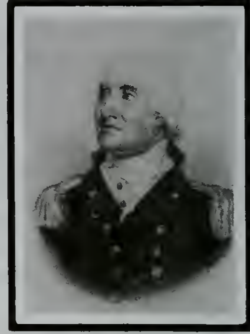
Paterson, William (1745–1806), delegate from New Jersey.
College, Princeton; lawyer; State Provincial Congress; Continental Congress; state attorney general; U.S. Senator; governor; U.S. Supreme Court justice.
"One of those kind of men whose powers break in upon you and create wonder and astonishment. He is a man of great modesty with looks that bespeak talents of no great extent, but he is a classic, a lawyer, and an orator; and of a disposition so favorable to his advancement that every one seemed ready to exalt him with their praises. He is very happy in the choice of time and manner of engaging in a debate, and never speaks but when he understands his subject well."

Pierce, Major William (1740–1789), delegate from Georgia.
Left convention before signing Constitution; major in Revolutionary War; merchant.
"I am conscious of having discharged my duty as a soldier through the course of the late Revolution with honor and propriety; and my services in Congress and the convention were bestowed with the best intention towards the interest of Georgia, and towards the general welfare of the Confederacy. The ... flattering opinion which some of my friends had of me. . .gave me a seat in the wisest council in the world."

(Portrait not available)



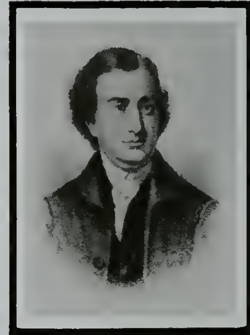
Pinckney, Charles (1757–1824), delegate from South Carolina.
Constitutional Convention; Ratification Convention; lawyer; South Carolina House of Representatives; prisoner of war during Revolutionary War; member of Continental Congress; governor; U.S. Senator; diplomat to Spain; U.S. Representative.
"A young gentleman of the most promising talents. He is, although only 24 years of age [actually he was 30], in possession of a very great variety of knowledge. Government, law, history and philosophy are his favorite studies, but he is intimately acquainted with every species of polite learning, and has a spirit of application and industry beyond most men. He speaks with great neatness and perspicuity, and treats every subject as fully, without running into prolixity, as it requires. He has been a member of Congress, and served in that body with ability and eclat."



Pinckney, Charles C. (1746–1825), delegate from South Carolina.

College, Oxford University, Inner Temple (law), Royal Military Academy of France; attorney general of South Carolina; member of South Carolina Assembly and president of the Senate; major general in Revolutionary War; two years prisoner of war; planter of rice and indigo; minister to France; unsuccessful vice-presidential and twice presidential candidate; president, Society of Cincinnati; president of board of trustees of University of South Carolina, which he helped establish.

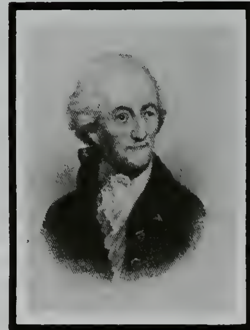
"A gentleman of family and fortune in his own state. He has received the advantage of a liberal education, and possesses a very extensive degree of legal knowledge.... Mr. Pinckney was an officer of high rank in the American army, and served with great reputation through the War."



Randolph, Edmund (1753–1813), delegate from Virginia.

College, William and Mary; Constitutional Convention; Ratification Convention; did not sign the Constitution; aide-de-camp to Washington; lawyer; member, State Constitutional Convention; state attorney general; mayor of Williamsburg; governor; member of Virginia Legislature; Continental Congress, Annapolis Conference; U.S. Attorney General; Secretary of State.

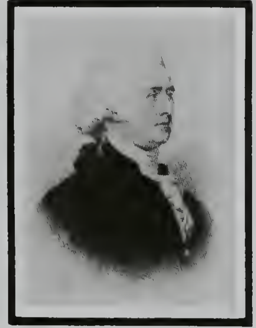
"Is governor of Virginia, a young gentleman in whom unite all the accomplishments of the scholar and the statesman. He came forward with the postulata, or first principles, on which the Convention acted, and he supported them with a force of eloquence and reasoning that did him great honor."



Read, George (1733–1798), delegate from Delaware.

Royal attorney general; member, Delaware Legislature; Continental Congress; signed Declaration of Independence; helped write Delaware's first constitution; active governor of Delaware; first Secretary of the Navy under Continental Congress; judge of the Court of Admiralty; U.S. Senator; chief justice, Supreme Court of Delaware.

"A lawyer and a judge; his legal abilities are said to be very great.... He is a very good man, and bears an amiable character with those who know him."



Rutledge, John (1739–1800), delegate from South Carolina.

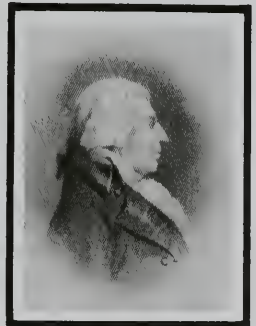
College, Temple, London, England; lawyer, royal attorney general of South Carolina; member of Continental Congress; Stamp Act Congress; president and commander in chief of South Carolina; governor of South Carolina; chancellor of highest court of South Carolina; chairman of the Committee on Detail, Constitutional Convention; chief justice, Supreme Court of South Carolina; Chief Justice, U.S. Supreme Court; state legislature.

"His reputation in the first Congress gave him a distinguished rank among the American worthies. He was bred to the law, and now acts as one of the chancellors of South Carolina. This gentleman is much famed in his own State as an orator.... He is undoubtedly a man of abilities, and a gentleman of distinction and fortune. Mr. Rutledge was once governor of South Carolina."

Sherman, Roger (1721–1793), delegate from Connecticut.

Shoemaker, merchant, surveyor, lawyer, judge, state senator; member of Continental Congress; mayor, New Haven; treasurer, Yale University; only American to sign the Declaration of Rights, Declaration of Independence, Articles of Confederation, and Constitution; served on committee to draft Declaration of Independence and Articles of Confederation; author (with Ellsworth) of "Connecticut Compromise," which gave each state two Senators; U.S. House of Representatives; U.S. Senator.

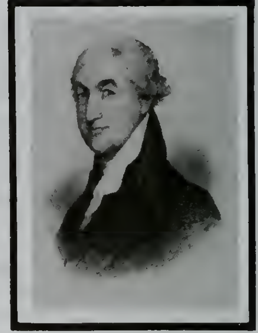
"In his train of thinking there is something regular, deep, and comprehensive. He ... deserves infinite praise. No man has a better heart or a clearer head.... He can furnish thoughts that are wise and useful. He is an able politician, and extremely artful in accomplishing any particular object; it is remarked that he seldom fails.... He sits on the bench in Connecticut and is very correct in the discharge of his judicial functions.... He has been several years a member of Congress and discharged the duties of his office with honor and credit to himself, an advantage to the State he represented."



Spaight, Richard Dobbs (1758–1802), delegate from North Carolina.

College, University of Dublin, Ireland, and Glasgow, Scotland; aide-de-camp of General Richard Caswell, Revolutionary War; member, North Carolina House of Commons; member, Continental Congress; governor; U.S. Representative; state senator.

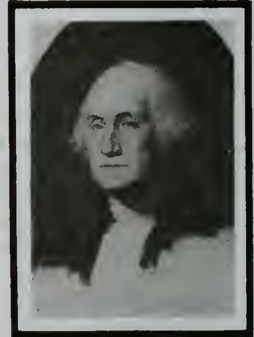
"Is a worthy man, of some abilities, and fortune.... He is able to discharge any public trust that his country may repose in him."



Strong, Caleb (1745–1819), delegate from Massachusetts.

College, Harvard; helped draft Massachusetts Constitution; lawyer, county attorney; Massachusetts House and Senate; U.S. Senator; governor.

"A lawyer of some eminence . . . and greatly in the esteem of his colleagues."



Washington, George (1732–1799), delegate from Virginia.

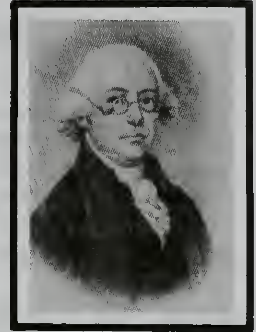
Honorary Doctor of Laws from Yale and Harvard; county surveyor; militia major and adjutant general; fought in French and Indian War; House of Burgesses; commander in chief of American armies during Revolutionary War; chancellor, William and Mary College; county judge; president, Society of Cincinnati; chairman of Constitutional Convention; first President of the United States.

"Well known as the commander in chief of the late American Army. Having conducted these States to independence and peace, he now appears to assist in framing a government to make the people happy. Like Gustavus Vasa, he may be said to be the deliverer of his country; like Peter the Great, he appears as the politician and the statesman, and like Cincinnatus he returned to his farm perfectly contented with being only a plain citizen, after enjoying the highest honor of the Confederacy, and now only seeks for the approbation of his countrymen by being virtuous and useful. The General was conducted to the Chair as president of the Convention by the unanimous voice of its members."

Williamson, Dr. Hugh (1735–1819), delegate from North Carolina.

College, University of Pennsylvania; medical student in London, Edinburgh, and Utrecht in Holland; medical doctor, including Medical Corps during Revolutionary War; minister, professor of mathematics, scientist, honorary Doctor of Laws at University of Leyden in Europe; member of Society of the Arts and Sciences, Utrecht, Holland; merchant and shipper; North Carolina Legislature; Continental Congress; Annapolis Trade Conference; U.S. Representative.

"Is a gentleman of education and talents. He enters freely into public debate from his close attention to most subjects. . . . There is a great degree of good humour and pleasantry in his character; and in his manners there is a strong trait of the gentleman."



Wilson, James (1742–1798), delegate from Pennsylvania.

College, Glasgow, Edinburgh; Universities of St. Andrew and Aberdeen, Scotland; University of Pennsylvania; Ratification Convention; teacher, lawyer; member of Continental Congress; signed Declaration of Independence; U.S. Supreme Court; helped write Pennsylvania constitution.

"Ranks among the foremost in legal and political knowledge.... He is well acquainted with man, and understands all the passions that influence him. Government seems to have been his peculiar study, all the political institutions of the world he knows in detail, and can trace the causes and effects of every revolution from the earliest stages of the Grecian commonwealth down to the present time. No man is more clear, copious, and comprehensive than Mr. Wilson, yet he is no great orator. He draws the attention, not by the charm of his eloquence, but by the force of his reasoning."

Wythe, George (1726-1806), delegate from Virginia.

Member of Continental Congress; signed Declaration of Independence; judge, lawyer, teacher; member of House of Burgesses; chancellor of Court of Equity; law teacher of two future Presidents and one Chief Justice; left Convention on June 17 to tend sick wife.

"One of the most learned legal characters of the present age.... He is remarked for his exemplary life and universally esteemed for his good principles. No man, it is said, understands the history of government better than Mr. Wythe—nor anyone who understands the fluctuating conditions to which all societies are liable better than he does.... He is a neat and pleasing speaker, and a most correct and able writer."

Yates, Robert (1738-1801), delegate from New York.

Lawyer; essayist; member of Provincial Congress and Council of Safety; helped draft first state constitution; chief justice of state supreme court.

(Portrait not available)

"A man of great legal abilities.... "

Additional Personalities Quoted in Connection with the Ratification Debates

With the exception of John Adams and Thomas Jefferson, the following persons participated in the state ratifying conventions of 1787–88 and are quoted in this volume. Adams and Jefferson were overseas on diplomatic missions for the United States during this period. However, these two men significantly influenced the debates of both the federal convention and the state conventions by means of their previous political writings and through correspondence with the convention participants. For this reason they also are quoted frequently in this book.

Adams, John (1735–1826): Delegate to the Continental Congress, Minister to England, second President of the United States.

Adams, Samuel (1722–1803): Governor of Massachusetts, delegate to the Continental Congress, "Father of the American Revolution."

Ames, Fisher (1758–1808): Massachusetts lawyer and assemblyman.

Backus, Reverend Isaac (1724–1806): Massachusetts delegate, clergyman, and historian.

Bloodworth, Timothy (1736–1814): Patriot and spokesman from North Carolina.

Bodman, Samuel (1711–1803): Patriot and spokesman from Massachusetts.

Bowdoin, James (1726–1790): Governor of Massachusetts, merchant and assemblyman.

Brooks, General E. (1726–1806): Brigadier general from Lincoln, Massachusetts.

Cabot, George (1751–1823): Shipmaster, merchant, and assemblyman from Massachusetts.

Carnes, J.: Patriot and spokesman from Massachusetts.

Corbin, Francis (1760–1821): Lawyer, studied in England, delegate from Virginia.

Dana, Judge Francis (1743–1811): Diplomat, lawyer, judge, and delegate from Massachusetts.

Davie, Caleb (1738–1797): Assemblyman and merchant from Massachusetts.

Davis, Mr.: Patriot and spokesman from Massachusetts.

Dawes, Thomas, Jr. (1757–1825): Patriot and spokesman from Massachusetts.

Dawson, John (1734–1804): Patriot and spokesman from Virginia.

Gore, Christopher (1758–1827): Lawyer, delegate, and spokesman from Massachusetts.

Goudy, William: Patriot and spokesman from North Carolina.

Grayson, William (1737–1790): Colonel in the Revolutionary War, lawyer from Virginia.

Hancock, John (1737–1793): Governor of Massachusetts, merchant, officer in the Revolutionary War.

Harrison, Richard: Patriot and spokesman from New York.

Hartley, Thomas (1748–1793): Colonel in Revolutionary War, delegate from Pennsylvania.

Heath, General William (1738–1814): Officer in Revolutionary War and delegate from Massachusetts.

Henry, Patrick (1736–1799): Delegate to the Continental Congress, governor of Virginia.

Hill, Whitmill (1743–1797): Colonel in Revolutionary War, delegate from North Carolina.

Holmes, Abraham (1754–1839): Officer in the Revolutionary War and delegate from Massachusetts.

Huntington, Samuel (1731–1796): Signer of the Declaration of Independence, governor of Connecticut.

Innes, James (1754–1798): Officer in Revolutionary War, lawyer and delegate from Virginia.

Iredell, James (1751–1799): Member of state Supreme Court and delegate from North Carolina.

Jarvis, Charles: Patriot and spokesman from Massachusetts.

Jay, John (1745–1829): Governor of New York, first Chief Justice of the U.S. Supreme Court.

Jefferson, Thomas (1743–1826): Author of Declaration of Independence and third President of the United States.

Johnson, James (1735–1820): Patriot and delegate from Virginia.

Johnston, Thomas (1720–1804): Major in the Revolutionary War and governor of North Carolina.

Law, Richard (1733–1806): Lawyer, judge, delegate to the Continental Congress from Connecticut.

Lee, Richard Henry (1732–1794): Signer of the Declaration of Independence and delegate from Virginia.

Livingston, G.: Patriot and spokesman from New York.

Livingston, Robert R. (1746–1812): Lawyer, judge and delegate from New York.

MacLaine, Archibald: Patriot and spokesman from North Carolina.

Marshall, John (1755–1835): Officer in Revolutionary War and Chief Justice of the U.S. Supreme Court.

McKean, Thomas (1734–1817): Signed Declaration of Independence, judge and governor of Pennsylvania.

Monroe, James (1758–1831): Colonel in Revolutionary War, wounded at Trenton, lawyer, fifth President of the United States.

Neal, James: Patriot and spokesman from Massachusetts.

Nicholas, Wilson (1761–1819): Fought in Revolutionary War, governor and delegate from Virginia.

Parsons, Theophilus (1750–1813): Delegate and chief justice of the Supreme Court of Massachusetts.

Pendleton, Edmund (1721–1803): Judge and delegate from Virginia.

Phillips, William: Patriot and spokesman from Massachusetts.

Randall, Benjamin (1742–1828): Patriot and spokesman from Massachusetts.

Rush, Dr. Benjamin (1745–1813): Signed Declaration of Independence, delegate from Pennsylvania.

Sedgwick, Theodore (1746–1813): Colonel in Revolutionary War, delegate from Massachusetts and Connecticut.

Shute, Reverend Daniel (1756–1829): Patriot and spokesman from Massachusetts.

Smilie, John (1742–1813): From Ireland fought in Revolutionary War, delegate from Pennsylvania.

Smith, John: Patriot and spokesman from Massachusetts.

Smith, Melancton (1744–1798): Captain in Revolutionary War, delegate from New York.

Snow, Isaac (1714–1799): Patriot and spokesman from Massachusetts.

Spencer, Samuel (1739–1794): Patriot and spokesman from North Carolina.

Stillman, Reverend Samuel: Patriot and spokesman from Massachusetts.

Sumner, Increase (1746–1799): Judge and governor of Massachusetts.

Thacher, Thomas: Patriot and spokesman from Massachusetts.

Tredwell, Thomas (1743–1831): Lawyer, judge, state senator, U.S. Congressman from New York.

Turner, Charles (1763–1820): Patriot and spokesman from Massachusetts.

Tweed, Alexander: Patriot and spokesman from South Carolina.

Tyler, John (1748–1813): Judge and governor from Virginia.

Williams, John (1752–1806): Medical doctor, officer in Revolutionary War, judge, U.S. Congressman from New York.

Wolcott, Oliver (1726–1797): Signer of the Declaration of Independence, major general in Revolutionary War, delegate from Connecticut.

Yeates, Jasper (1745–1817): Member of Supreme Court of Pennsylvania, delegate from Pennsylvania.

1776

FREEDOM— AN IDEA WHOSE TIME HAS COME

This book is about the world's greatest political success formula. In a little over a century, this formula allowed a small segment of the human family—less than 6 percent—to become the richest industrial nation on earth. It allowed them to originate more than half of the world's total production and enjoy the highest standard of living in the history of the world.

It also produced a very generous people. No nation in all the recorded annals of the past has shared so much of its wealth with every other nation as has the United States of America. Even when it loaned money, it often forgave the debt.

But Americans have much more to share than their wealth. They have the world's greatest political success formula to share. In this respect they have been at fault. They have been too self-conscious

about their system and its accomplishments. At times they have been almost apologetic that they have had such a remarkable system when the rest of the world did not. The world needs to know this formula. It worked for Americans when they were an undeveloped country. It will work for underdeveloped countries today.

The Three Things All Mankind Is Seeking

As we travel around the world in this modern jet age, we can vividly see that all mankind is seeking the same three things.

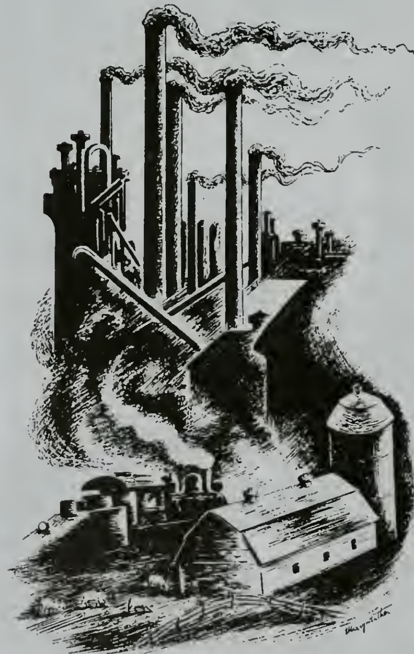
First of all, mankind longs for freedom—both personally and nationally.

Second, mankind longs for prosperity, both personally and nationally.

Third, mankind longs for peace and the means of escaping from the apocalyptic anguish brought on by the plague of war.

To achieve these three great human aspirations, the Constitution of the United States was written. It launched the ingenious Freedom Revolution two hundred years ago and thereby provided the political and economic climate for six subsequent revolutions.

Six Great Revolutions Which Freedom Made Possible



The Industrial Revolution was the first of six great modern revolutions that developed in the new climate of freedom.

First came the Industrial Revolution, which, through efficient factories, allowed mankind to begin to obtain the necessities of life in quantity.

Second, we moved into the Machine Revolution, which gradually transferred the weary burden of the most arduous work from human and animal muscle power to machine power. This began to make the necessities of life both abundant and cheap.

Third, we entered the Transportation Revolution, which gradually changed the world into a much more closely related community of nations.

Fourth, we developed the Communications Revolution, which changed the planet from a community of nations into a vast, global neighborhood with instant news coverage telling us what is happening to our neighbors all over the world.

Fifth, we entered the Energy Resource Revolution, with fabulous underground lakes of oil and layers of fossil fuels. More recently, we have harnessed nuclear energy, which may turn out to be the safest, cheapest, and most abundant fuel of all. Cheap energy will allow the human standard of living to make a gigantic leap all over the world.

Sixth, we reached the Computer Revolution, where tiny chips of programmed electronic circuitry are able to store knowledge and record prior commands so as to make machines "think" and "act."

All six of these magnificent advancements can continue to thrive only in a climate of freedom. Nations which have recently lost their freedom have immediately experienced a catastrophic collapse, as every one of these advantages which were gained by these six great revolutions has virtually disappeared into an oblivion of misery and bare-subsistence survival.

Freedom is the key.

The Founders' Freedom Formula

The American Founding Fathers were students and philosophers as well as soldiers and politicians. They carefully scrutinized every system of government in existence to see which one was the most likely to make it possible for humanity to attain the three great goals of freedom, prosperity, and peace.

But among all the political systems of the day, there was no such government. Around the globe, every government was structured to exploit its people, reduce them to poverty, and marshal their intimidated youth into predatory wars against nearby nations. No existing government was designed to provide its people with freedom, prosperity, and peace.

Therefore, the Founders sat down to invent one.

Charles Pinckney

One of those who verbalized the feelings of the Founders at that time was Charles Pinckney of South Carolina, who asked:

"Is there, at this moment, a nation upon earth that enjoys this right, where the true principles of representation are understood and practiced, and where all authority flows from and returns at stated periods to the people? I answer, there is not."

Then he asked what existing governments were based upon, and said:

"To fraud, to force, or accident, all the governments we know have owed their births."

Finally, he marveled over the monumental undertaking the Founders were striving to achieve. He said:

"To the philosophical mind, how new and awful an instance do the United States at present exhibit in the political world! They exhibit, sir, the first

instance of a people, who, being dissatisfied with their government—unattacked by foreign force, and undisturbed by domestic uneasiness—cooly and deliberately resort to the virtue and good sense of their country, for a correction of their public errors."[1]

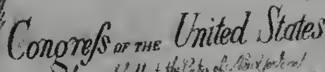
As it turned out, the American formula was more like a restoration of what Jefferson called "the ancient principles" than an invention of something entirely new. Nevertheless, even after the Founders had discovered these principles, it still required the utmost ingenuity at the Constitutional Convention to fit them into the requirements of a modern society.

In this book we are going to tell the Founding Fathers' story. Much of it is told in the words of the Founders themselves. Our purpose is to explain their unique perspective on vital issues and then provide rather extensive passages from their own writings. The reader can then feel the power of their minds sweeping away centuries of bad government and bad laws to formulate a whole new structure of society based on those "ancient principles" of human freedom.

The Founders' View of Human Nature

The Founders were optimistic as well as realistic about human nature. They realized that all human beings are a mixture of sunshine and shadow. The sunshine consists of the perfectibility of human reason. This makes government and civilization possible. The darker side of human nature is the imperfectibility of human passion and man's faulty sense of judgment that make government necessary. As James Madison stated, "As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence."[2]

The Founders' goal was to revive the ancient principles which would allow the sunshine side of human nature to enjoy virtually unlimited freedom, while setting up appropriate safeguards to prevent the doleful shadow of human passion, greed, and lust for power from spreading a permanent "dark ages" across the face of the globe.



As Clinton Rossiter wrote, there is "no happiness without liberty, no liberty without self-government, no self-government without constitutionalism, no constitutionalism without morality—and none of these great goods without stability and order."[3]

The Miracle of America

It is truly astonishing that after several thousand years of human experimentation with various forms of government and economics, the American charter of liberty turned out to be the first successful attempt to build a whole civilization on the principles of freedom. Americans, as a result, became the first free people in modern times.

Several of those who had the honor of being called American "Founders," and who spent their lives and fortunes hammering out the practical aspects of a system of "freedom under law," called the final version of the United States Constitution a "miracle."[4]

In a letter to the Marquis de Lafayette on February 7, 1788, George Washington wrote, "It appears to me, then, little short of a *miracle,* that the delegates from so many different states (which states you know are also different from each other, in their manners, circumstances, and prejudices) should unite in forming a system of national government."[5]

James Madison wrote to Thomas Jefferson in France on December 9, 1787, saying it was "impossible to consider the degree of concord which ultimately prevailed as less than a *miracle.*"[6]

But what was this "miracle" system of government and economics? And why did it take so many centuries for scholars and political leaders to come up with a success formula based on freedom?

The Founders themselves said that it could not have been achieved without a number of highly favorable circumstances. These circumstances combined to provide the cultural environment which virtually compelled them to take this dangerous and exciting new leap into the unknown. The miracle required a certain amount of isolation, a more or less homogeneous population, a common language, a common set of basic beliefs, a universal sense of urgency because of a common threat, and a generous sprinkling of remarkable leaders, in each of the regions, who were willing to meet together and strive for a common goal. The presence of all of these ingredients is part of the "miracle" which became America.

The Cultural Soil in Which American Freedom Grew

The Founders and many of their contemporaries seemed to have recognized the unique and propitious set of circumstances which had been gradually thrust upon them. Their paramount ambition therefore developed into a surging anxiety to somehow seize this opportunity for the creation of a free society before it slipped from their grasp. As we shall see in this book, it almost escaped them.

John Jay, the first Chief Justice of the Supreme Court, commented on the singular good fortune of the Americans as they undertook the task of establishing a great free nation. He wrote:

"America was not composed of detached and distant territories, but...one connected, fertile, widespreading country was the portion of our western sons of liberty. Providence has in a particular manner blessed it with a variety of soils and ... innumerable streams for the delight and accommodation of its inhabitants....

"I have...often taken notice that Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their joint counsels, arms, and efforts, fighting side by side throughout a long and bloody war, have nobly established their general liberty and independence."[7]

The Founders Held a Long-Range View of the Future

The Founders believed that their commonwealth of freedom would eventually encompass the entire North American continent, and they held to this view in spite of the claims of England, Russia, France, and Spain to parts of this territory. The American leaders were deeply disappointed when the four French colonies in Canada declined to join the thirteen states under the Articles of Confederation. Nevertheless, they frequently expressed their complete confidence that new states would be added until their Union extended from the Atlantic seaboard to the shores of the Pacific.[8]

As far as population was concerned, the Founders predicted that within a century the land would be occupied by at least fifty million people.[9] John Adams declared that he was quite certain that one day the great "American empire" would boast a population of between 200 and 300 million freemen.[10]

The Constitution Designed to Accommodate Changing Times

As we shall see from the Founders' own writings, the Constitution was intended to be strictly interpreted exactly as it was originally written. They knew that in its original form it would adapt itself very readily to the needs of changing times. It was specifically designed to disperse political power among the people and protect the freedom of the individual by putting chains on the excessive ambitions and frailties of human nature, which is always the same from generation to generation. They knew we would need these constitutional chains in our present industrial age just as much as they did in their own agrarian age of farming and horticulture. In other words, the Founders saw the Constitution as a perpetual charter of human liberty that would never become obsolete.

To prevent any politician from shattering the chains of the Constitution and

thereby destroying its system of checks and balances, the Founders urged their successors and descendants to never allow the Constitution to be changed by usurpation or twisted interpretation. It was to be changed only by carefully adopted amendments. The amendment process was designed to permit a full-scale public discussion of any proposed changes. It is impressive to discover how many proposed amendments of the past that looked so highly desirable when first presented were rejected completely after being carefully scrutinized during the amendment process.

Pioneering Freedom for the Whole Human Race

Throughout the writings of the Founding Fathers there are numerous references to their commitment to build a new civilization—a civilization which would not only provide peace and prosperity for themselves, but would become a model for the rest of mankind. Even before the Declaration of Independence was written, John Adams saw the blossoming of human hope which was beginning to flower in America, and wrote:

"I always consider the settlement of America with reverence and wonder, as the opening of a grand scene and design in Providence for the illumination of the ignorant, and the emancipation of the slavish part of mankind ALL OVER THE EARTH."[11]

John Adams

In the same spirit, James Madison wrote:

"Happily for Americans, happily we trust FOR THE WHOLE HUMAN RACE, they [the Founders] pursued a new and more noble course."[12]

The outreaching mind of Thomas Jefferson, which continually surveyed the world in search of principles which would enhance the welfare of all mankind, had this to say in a letter to one of his friends:

"A just and solid republican government maintained here, will be a standing monument and example for the aim and imitation of the people of other countries; and I join with you in the hope and belief that . . . our revolution and its consequences, will ameliorate the condition of man over a great portion of the globe. What a satisfaction have we in the contemplation of the benevolent effects of our efforts, compared with those of the leaders of the other side, who have discountenanced all advances in science as dangerous innovations, have endeavored to render philosophy and republicanism terms of reproach, to persuade us that men cannot be governed but by the rod."[13]

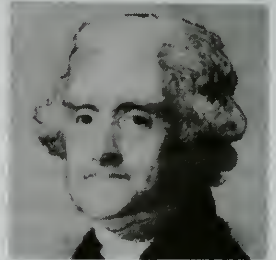
The Founders' Sense of Mission

As John Jay pointed out, the American people had been literally thrust into an amazing accumulation of fortunate circumstances which obligated them to determine whether or not a body of approximately three million human beings

could deliberately, and by calculated design, organize themselves into a free nation. The possibility of immediate and tangible success gave that whole generation a feeling of obligation and a sense of mission which they felt compelled to fulfill as pioneers on the frontiers of political science and prosperity economics. They called it their "manifest destiny."

The spirit of dedication to the welfare of all humanity, not just themselves, is reflected in passages such as this one from John Adams, who described the entire process of nation building as a "divine science." He wrote:

"The science of government is my duty to study, more than all other sciences; the arts of legislation and administration and negotiation ought to take the place of, indeed exclude, in a manner, all other arts. I must study politics and war, that my sons may have liberty to study mathematics and philosophy. My sons ought to study mathematics and philosophy, geography, natural history and naval architecture, navigation, commerce, and agriculture, in order to give their children a right to study painting, poetry, music, architecture, statuary, tapestry, and porcelain."[13]


Thomas Jefferson

Thomas Jefferson's sense of mission is equally prominent throughout his writings. For example:

"We owe every other sacrifice to ourselves, to our federal brethren, AND TO THE WORLD AT LARGE, to pursue with temper and perseverance the great experiment which shall prove that man is capable of living in society, governing itself by laws self-imposed, and securing to its members the enjoyment of life, liberty, property, and peace; and further to show, that even when the government of its choice shall manifest a tendency to degeneracy, we are not at once to despair, but that the will and the watchfulness of its sounder parts will reform its aberrations, recall it to original and legitimate principles, and restrain it within the rightful limits of self government."[15]

America Becomes the Hope of the World

Even before the American commonwealth of freedom had been established, people of all classes and all nationalities were beginning to anticipate great possibilities in the future development of something new and exciting in America. America seemed to breathe a spirit of hope into the minds of the restless and oppressed people in Europe. It had such a stimulating effect on the English that, before long, one out of every four Englishmen was living in America. There was even mention in some circles that the capital of the British Empire should be moved to America.

Probably no European saw greater hope for humanity in the American experiment than the French judge and political writer Alexis de Tocqueville, who had spent nearly two years in the United States. After the French

revolution of 1848, he urged his fellow countrymen to look to America if they wanted to find the formula for the best government on earth. He said:

"For sixty years the [American] people ... have increased in opulence; and—consider it well—it is found to have been, during that period, not only the most prosperous, but the most stable of all the nations of the earth....

Alexis de Tocqueville

"Where else could we find greater causes of hope, or more instructive lessons? Let us look to America, not in order to make a servile copy of the institutions that she has established, but to gain a clearer view of the polity that will be the best for us.... The laws of the French republic may be, and ought to be in many cases, different from those which govern the United States; but the principles on which the American constitutions rest, those principles of order, of the balance of powers, of true liberty, of deep and sincere respect for right, are indispensable to all republics."[16]

As the leaders of other countries studied the principles of the United States Constitution, there was widespread acclaim for this upward leap in good government and sound economics.

The great leader in Parliament, William Pitt, exclaimed, "It will be the wonder and admiration of all future generations, and the model of all future constitutions."[17]

The prime minister of England, William E. Gladstone, later said: "It is the greatest piece of work ever struck off at a given time by the brain and purpose of man."[18]

The first prime minister of Canada, Sir John A. Macdonald, said, "I think and believe that it is one of the most perfect organizations that ever governed a free people."[19]

Responsibility of the People Under the American System

It was a basic principle of the American experiment that it was to be a government of the people, by the people, and for the people. The corollary to this primary principle was the obvious barb that this American type of government would not function efficiently, and perhaps might not even survive, if the PEOPLE did not maintain a constant vigilance and thereby develop what Jefferson called an intelligent and informed electorate.

It was customary in some of the early state legislatures to have powerful spokesmen of the day come before the representatives of the people at one of

their early sessions and remind them of the importance of the lawmaking process. An eloquent example of this kind of dissertation is found in a speech by patriot Samuel Langdon before the Massachusetts legislature in 1788. He declared:

"On the people, therefore, of these United States, it depends whether wise men, or fools, good or bad men, shall govern.... Therefore, I will now lift up my voice and cry aloud to the people....

"From year to year be careful in the choice of your representatives and the higher powers [offices] of government. Fix your eyes upon men of good understanding and known honesty; men of knowledge, improved by experience; men who fear God and hate covetousness; who love truth and righteousness, and sincerely wish for the public welfare.... Let not men openly irreligious and immoral become your legislators.... If the legislative body are corrupt, you will soon have bad men for counselors, corrupt judges, unqualified justices, and officers in every department who will dishonor their stations.... Never give countenance to turbulent men, who wish to distinguish themselves and rise to power by forming combinations and exciting insurrections against government.... I call upon you also to support schools in your towns.... It is a debt you owe to your children."[20]

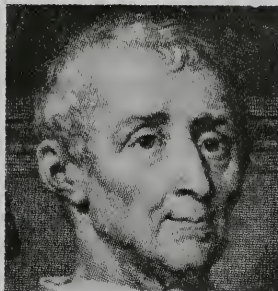
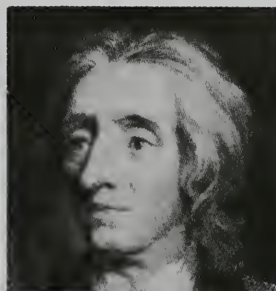
American Institutions Founded on Widespread Basic Beliefs

One of the most amazing aspects of the American story is that, while the nation's Founders came from widely divergent backgrounds, their fundamental beliefs were virtually identical. They quarreled bitterly over the most practical plan of implementing those beliefs, but rarely, if ever, disputed about their final objectives or basic convictions.

These men came from several different churches, and some from no churches at all. They ranged in occupation from farmers to presidents of universities. Their social background included everything from wilderness pioneering to the aristocracy of landed estates. Their dialects included everything from the loquacious drawl of South Carolina to the clipped staccato of Yankee New England. Their economic origins included everything from frontier poverty to opulent wealth.

Then how do we explain their remarkable unanimity in fundamental beliefs?

Perhaps the explanation will be found in the fact that they were all remarkably well read, and mostly from the same books. Although the level of their formal training varied from spasmodic doses of home tutoring to the rigorous regimen of Harvard's classical studies, the debates in the Constitutional Convention and the writings of the Founders reflect a far broader knowledge of religious, political, historical, economic, and philosophical studies than would be found in any cross section of American leaders today.

Many of the principles found in the Constitution had been expressed by earlier political thinkers. Three of the most important were (from left) Cicero, Baron Charles de Montesquieu, and John Locke.

The thinking of Polybius, Cicero, Thomas Hooker, Sir Edward Coke, Baron Charles de Montesquieu, Sir William Blackstone, John Locke, and Adam Smith salt-and-peppered their writings and their conversations. They were also careful students of the Bible, especially the Old Testament, and even though some were not active in any Christian denomination, the teachings of Jesus were held in universal respect and admiration by them.

Their readings also included a broad perspective of Greek, Roman, Anglo-Saxon, European, and English history.

Nothing is more remarkable about the early American leaders than this breadth of reading and depth of knowledge concerning the essential elements of sound nation building.

The relative uniformity of fundamental thought shared by these men included strong and unusually well-defined convictions concerning religious principles, political precepts, economic fundamentals, and long-range social goals. On particulars, of course, they quarreled, but when discussing fundamental precepts and ultimate objectives, they seemed practically unanimous.

They even had strong criticism of one another as individual personalities, yet admired each other as laborers in the common cause. John Adams, for example, felt strong personality conflicts between himself and Benjamin Franklin and even Thomas Jefferson. Yet Adams's writings are steeped in accolades for both of them, and their writings carried the same for him. One of George Washington's most vehement critics was Dr. Benjamin Rush, and yet that Pennsylvania physician boldly supported everything for which Washington worked and fought.

Why It Is Important to Study The Founders' Success Formula Today

The American people are now two centuries away from the nation's original launching. Our ship of state is far out to sea and is being tossed about in stormy waters, which the Founders felt could have been avoided if we had stayed within sight of our initial moorings. They also felt that each ingredient

set forth in their great success formula was of the highest value. They would no doubt be alarmed to see how many of those ingredients have been abandoned, or have been allowed to become seriously eroded.

Nevertheless, an important lesson of life is that even prodigality may be useful in its way. At least it can serve to satisfy, in the future, our curiosity concerning forbidden pathways. In the past two centuries the American heritage has been subjected to a long list of experimental explorations into nonconstitutional detours. Our consistent disappointment and fading expectations could be a valuable legacy of warning to the next generation.

The immediate task, of course, is to learn about the Constitution ourselves. Most Americans of this generation must confess that they have never taken the time from their busy lives to pursue the Founders' exciting historical pilgrimage in search of those "ancient principles." Nevertheless, it is an amazing and gratifying adventure. It makes the student begin to recapture the original vision of the Founders when they assured the world that these principles would provide the freedom, prosperity, and peace that mankind is seeking.

Freedom is America's Greatest Export

In the immediate future, carefully trained Americans should commence exporting the Founders' great success formula. The world is waiting for it. We are living in a fantastic age when scientists are developing the technology to mine for minerals on the moon and to build satellite islands in space. A commercial transport is already being planned which can go sixty miles above the earth and deliver passengers from Los Angeles to New York in twelve minutes. It will circumnavigate the globe in an hour and thirty minutes. It will make every flying machine of our day virtually obsolete.

But all of this exciting progress in scientific technology is accompanied by a growing sense of urgency to provide a blueprint for an advanced civilization capable of living in this great new era. Obviously, the leap in modern technology is a thrilling adventure, but the fact remains that if the human race gets too far away from its basic spiritual and cultural moorings, that promising era of the future could end up in a crematorial holocaust of flame and fury.

So this book is vital for those who wish to catch the Founders' vision of human achievement in a great new age which we call "the eighth step." The Founders took us up to the seventh step, but we have since slipped off our pedestal slightly. We must regain our footing, reexamine our game plan, and then begin exporting our formula for freedom, prosperity, and peace to the rest of the world. It is fundamental to the progress, happiness, and self-realization of all mankind. It is what the Founders expected of us.

It may turn out to be the key for the survival of the human family on the planet earth.

1. Jonathan Elliot, ed., *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, 5 vols. (Philadelphia: J.B. Lippincott Company, 1901), 4:331. Hereafter cited as Elliot.

2. Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: Mentor Books, 1961), No. 55.

3. Ibid., introduction, p. xvi.

4. Catherine Drinker Bowen, *Miracle at Philadelphia* (London: Hamish Hamilton, 1967), p. 213.

5. John C. Fitzpatrick, ed., *The Writings of George Washington*, 39 vols. (Washingon: United States Government Printing Office, 1931–44), 29:409; emphasis added.

6. Robert A. Rutland, ed., *The Papers of James Madison*, 14 vols. by 1983 (Chicago: University of Chicago Press, 1962–), 10:208; emphasis added.

7. *Federalist Papers*, No. 2.

8. Albert Weinberg, *Manifest Destiny* (Gloucester, Mass.: Peter Smith Publishers, 1958), pp. 1–2, 43; Conrad Cherry, ed., *God's New Israel* (Englewood Cliffs, N.J.: Prentice-Hall, 1971), p. 1.

9. Weinberg, *Manifest Destiny*, p. 84.

10. Adrienne Koch, ed., *The American Enlightenment* (New York: George Braziller, 1965), p. 131.

11. Quoted in Ernest Lee Tuveson, *Redeemer Nation* (Chicago: University of Chicago Press, 1974), p. 25.

12. *Federalist Papers*, No. 14.

13. Martin A. Larson, ed., *Jefferson: Magnificent Populist* (Washington: Robert B. Luce, 1981), p. 92.

14. Letter to Abigail Adams (1780), quoted in Koch, *The American Enlightenment*, p. 188.

15. Larson, *Jefferson: Magnificent Populist*, p. 110.

16. Alexis de Tocqueville, *Democracy in America*, 12th ed., 2 vols. (New York: Vintage Books, 1945), 1:x.

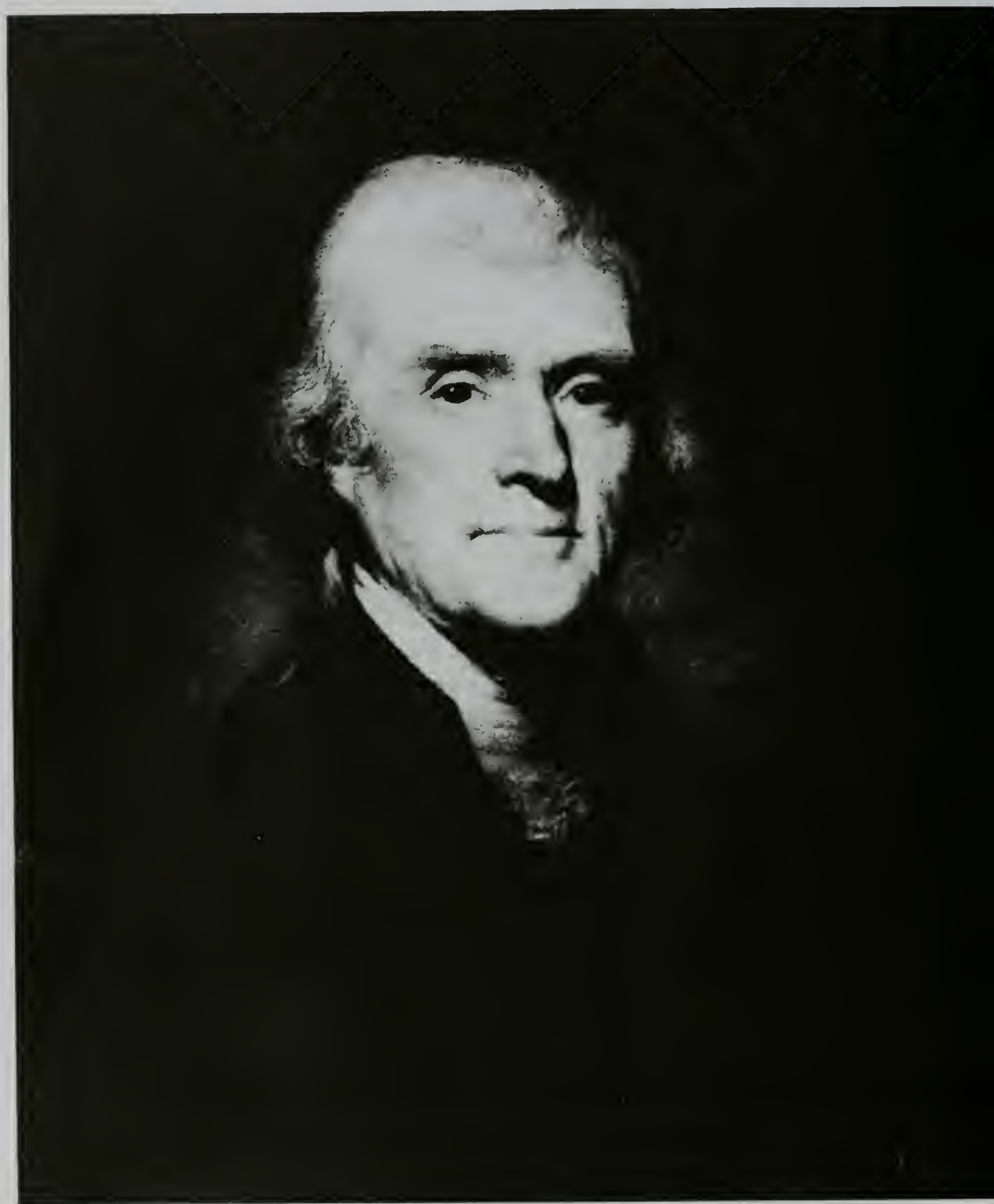
17. Harry Atwood, *Our Republic* (Merrimac, Mass.: Destiny Publishers, 1974), p. 62.

18. Ibid.

19. R. MacGregor Dawson, *The Government of Canada* (Toronto and Buffalo: University of Toronto Press, 1970), p. 36.

20. Cherry, *God's New Israel*, pp. 100–101.

The Statue of Liberty heralds America's greatest offering to the world: freedom.



CHAPTER

THE MAN WHO DISCOVERED AMERICA'S FREEDOM FORMULA

One of the most exciting stories in American history is the account of the man who tunneled back into the ancient past and was among the first to rediscover the remarkable formula which allowed the United States to become the first free nation in modern times. As a matter of fact, it took the early Americans 180 years (1607–1787) to put it all together, but when it finally settled into place, their formula ignited the fires of freedom all over the world.

Perhaps there is a tendency to take much of this for granted. However, the Founders warned us that their formula for freedom could be lost in a single generation. No doubt our appreciation of the Founders' achievement will be stimulated by briefly tracing the fascinating explorations of the one man who probably had as much influence on the final results as any person living in that day.

Who Was Thomas Jefferson?

Practically every American knows the name of Thomas Jefferson, but very few Americans know his story. We will first record a few biographical facts and then present Jefferson's little-known discovery in which he uncovered the ancient formula for a society based on freedom, prosperity, and peace.

Thomas Jefferson was born April 13, 1743, up near the Blue Ridge Mountains of what is now the western section of the state of Virginia. By that time, George Washington was eleven years old. In Philadelphia, Benjamin Franklin was thirty-seven years old. He had already invented the "Franklin Stove" and was city postmaster. In Boston, Samuel Adams, who is often called the "Father of the Revolution," was just graduating from Harvard with a master's degree at the age of twenty-one. Samuel's younger cousin, John Adams, was eight years old when Jefferson was born. One day he would induce Jefferson to write the Declaration of Independence. Patrick Henry was seven years old. However, James Madison, who would have so much to do with putting Jefferson's ideas into the Constitution, would not be born until eight years later.

Obviously, it was an illustrious age, and the names of men who would later receive international fame because of their connection with the founding of the United States were beginning to appear on the American scene.

Jefferson's Early Life

Jefferson was born at Shadwell on the Rivanna River, which forms one of the headwaters of the James River. It was rugged frontier country. Jefferson never considered himself an aristocratic dandy, even though his mother was from the

Thomas Jefferson as a young man—though friends agreed that it was a poor likeness.

prominent Randolph family and his father was a member of the House of Burgesses. Young Tom took pride in the fact that his father, Peter Jefferson, was not only the hardest working man he had ever seen, but was also reputed to be one of the strongest men in the whole dominion. It was said that he could upend two tobacco hogsheads at the same time, each weighing over five hundred pounds.[1] Peter Jefferson helped survey and draw the first accurate map of Virginia. He was justice of the peace and a lieutenant colonel in the county militia.[2]

Tom's father had a tremendous influence in shaping the character of his son and inspiring him with a powerful sense of commitment in building up the great new American commonwealth. It therefore came as a tremendous emotional shock to Thomas Jefferson when his father suddenly died. Young Jefferson was then only fourteen years of age.

This made Thomas Jefferson the head of his family, with an estate located in one of the most challenging and rugged sections of the Virginia frontier. He later realized that this was a point in his life when he might easily have lost his way and afterwards commented on the challenge and temptations he faced as a teenager:

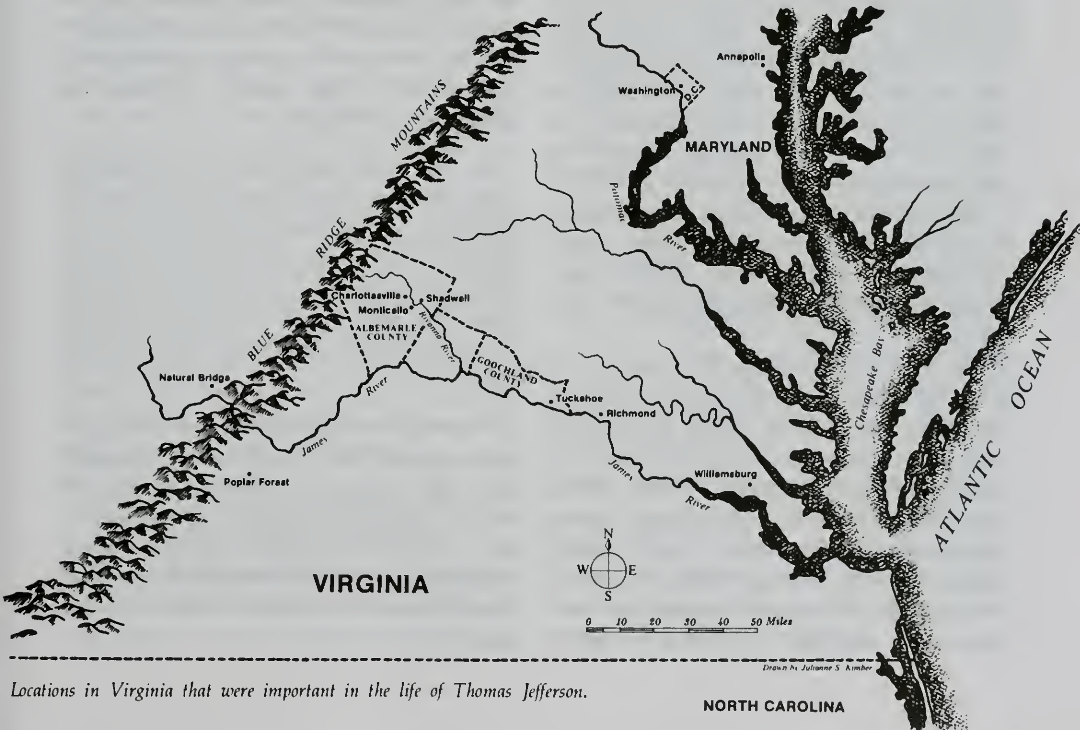
"When I recollect that at fourteen years of age the whole care and direction of myself was thrown on myself entirely, without a relation or friend qualified to advise or guide me and recollect the various sorts of bad company with which I associated from time to time, I am astonished I did not turn off with some of them and become as worthless to society as they were."[3]

Graduates from College at Age Nineteen

Fortunately, his father's will provided sufficient funds for him to further his education. Jefferson first dug into Latin and Greek so he could read classical works in their original languages. He seems to have been equally diligent in other studies. By the age of sixteen he was allowed to enter the College of William and Mary in Virginia's capital city of Williamsburg. He entered as an *advanced* student. Even at sixteen, he was remarkably well developed. At around six feet, two inches in height, he stood nearly a head taller than the average citizen of those days.

One who knew him at this time described him as follows:

"He was a fresh, bright, healthy-looking youth, with large feet and hands, red hair, freckled skin,. . . hazel-gray eyes, prominent cheekbones, and a heavy chin. His form 'was straight as a gun barrel, sinewy and alert,' and he cultivated his strength 'by familiarity with saddle, gun, canoe, and minuet.' He early showed . . . perfect self-reliance, and had strong taste for mathematics and mechanics."[4]



Locations in Virginia that were important in the life of Thomas Jefferson.

The College of William and Mary, which Jefferson attended as a young man.

His friend John Page, who later became governor of Virginia, was amazed that Jefferson was literally in love with learning. No matter how much he might be enjoying a party or the prospects of a hunt, he "could tear himself away from his dearest friends to fly to his studies."[5]

His intensity with books was inspired in part by a warm friendship which developed between himself and a favorite professor named Dr. William Small. Jefferson wrote:

"It was my great good fortune, and what probably fixed the destinies of my life, that Dr. William Small of Scotland was then professor of mathematics, a man profound in most of the useful branches of science, with a happy talent of communication, correct and gentlemanly manners, and an enlarged and liberal mind. He, most happily for me, became so attached to me and made me his daily companion when not engaged in the school, and from his conversation I got my first views of the expansion of science and of the system of things in which we are placed."[6]

By the time Jefferson had graduated from William and Mary at the age of nineteen, he had developed mature study habits. It was not unusual for him to spend up to fourteen hours a day with his books, his violin, and a run each evening to keep himself physically fit. We read that·

"During the most closely occupied days of his college life, it was his habit to study until two o'clock at night and rise at dawn. The day he spent in close application — the only recreation being a run at twilight to a certain stone which stood at a point a mile beyond the limits of the town."[7]

Young Thomas Jefferson's Three Distinguished Friends

Striving for excellence was Thomas Jefferson's natural habit, and the ability he achieved with three hours a day on the violin paid off handsomely in several phases of his life. During his college days it brought him to the attention of the royal governor, Francis Fauquier. The governor was no ordinary politician but a former student and protege of Sir Isaac Newton in England. Fauquier was an economist of some repute, a student of physics, and a fellow of the Royal Society of England. We have already mentioned the first of Jefferson's distinguished friends, Professor William Small, and it was the professor who introduced Jefferson to Governor Fauquier. Before long the governor had Jefferson playing his violin in weekly concerts conducted at the Governor's Palace.

George Wythe

Professor Small also introduced Jefferson to the famous George Wythe, who would later sign the Declaration of Independence and serve at the Constitutional Convention. Wythe (pronounced *With*) was the first law professor in America and later had a tremendous influence on Jefferson's study of the law.

For some time Governor Fauquier, George Wythe, and Professor Small had been meeting each week for dinner and philosophical discussions. Now they included young Thomas Jefferson. "At these dinners," Jefferson later recalled, "I have heard more good sense, more rational and philosophical conversations, than in all my life besides."[8]

Five Years of Specialized Study with George Wythe

It was the greatest stroke of good fortune that Thomas Jefferson had the opportunity to be accepted by George Wythe as a protege for the study of law. The two got along famously. Wythe thought a well-trained lawyer should know just about everything and Thomas Jefferson had the appetite for it.

He studied not only the law, but also languages, physics, agriculture, mathematics, philosophy, chemistry, anatomy, zoology, botany, religion, politics, history, literature, rhetoric, and virtually every other subject imaginable — always recording quotations and observations in his personal notebooks. Jefferson called this "a time of life when I was bold in the pursuit of knowledge, never fearing to follow the truth and reason to whatever results they led."[9]

He had an amazing aptitude for languages so that by adulthood he could read Latin, Greek, Spanish, Italian, and Anglo-Saxon. In addition to his mastery of the spoken word in his native tongue, he became very fluent in French.

Patrick Henry's fiery speech before the Virginia House of Burgesses had a profound effect on Thomas Jefferson.

The Day That Changed His Life

During these days of intensive study in Williamsburg, which was the dominion capital, he occasionally broke away to hear the debates in the House of Burgesses. On May 29, 1765, a newly elected member of the assembly named Patrick Henry rose to give his famous oration against the Stamp Act. This is the speech in which he said, "If this be treason, make the most of it!" Jefferson was there. He says:

"I attended the debate [standing] at the door of the lobby of the House of Burgesses, and heard the splendid display of Mr. Henry's talents as a popular orator. They were great indeed; such as I have never heard from any other man. He appeared to me to speak as Homer wrote."[10]

Something remarkable happened to Thomas Jefferson that day. As he stood listening intently to Patrick Henry's eloquent denunciation of the abuses that were being heaped upon the American colonies, it kindled a flame in his soul. He felt such a surge of fervor for the cause of freedom and justice that the flame burned brightly the rest of his days. He later referred to this as the most important day of his life.[11]

He Is Admitted to the Bar

In early 1767, Jefferson was brought before the General Court of Virginia for an oral examination to gain admittance to the bar. He was being sponsored by George Wythe, Virginia's foremost legal authority. Since most lawyers submitted themselves to the bar examination after little more than six months' preparation, Jefferson's erudite young mind created quite a stir among the judges that day. No matter what the subject, he seemed to know more than they did. It must have pleased George Wythe to see his brilliant pupil respond to the penetrating questions from the gentlemen on the bench.

At the age of twenty-three Jefferson was admitted to the bar and immediately moved back to his hometown of Shadwell, where he began the practice of law. The next year he was elected to represent his county in the House of Burgesses.

Jefferson's Marriage

Thomas Jefferson was always very popular socially, but he was rather shy around the young ladies. He seems to have adored them from a distance. When he was nineteen he conjured up enough courage to ask a beautiful belle of Williamsburg—named Belinda Burwell—to marry him. He had practiced his proposal with his usual thoroughness.

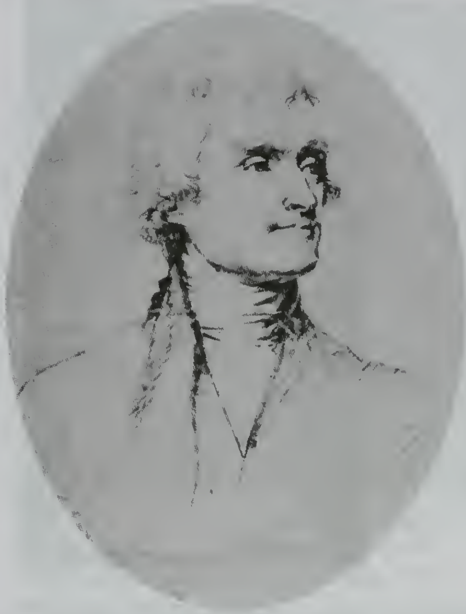
"But . . . when I had an opportunity . . . a few broken sentences, uttered in great disorder and interrupted with pauses of uncommon length, were the too visible marks of my strange confusion!"[12]

Silhouette of Thomas Jefferson's wife, Martha Wayles Skelton.

No doubt Belinda listened to the painful declamation with astonishment and amusement but no more so than a short time later when he came back again, even better rehearsed. Jefferson got his answer a few weeks later when Belinda married Jefferson's best friend. And his best friend, not knowing Jefferson's deep feelings for his fiancée, asked Thomas to be the best man at the wedding!

It was not until eight years later that Jefferson gained enough courage to propose again. This time it was to a very attractive young widow in Williamsburg, Martha Wayles Skelton, whose husband had died before she was twenty. She often accompanied Jefferson on the harpsichord when he played his violin. From this association a romance developed of the classical variety which is usually found only in story books. Jefferson built a beautiful home for his new bride, called Monticello, which is today one of the most famous houses in America.

Monticello, Jefferson's home, which he designed and built himself.



Thomas Jefferson

Thomas Jefferson practiced law for seven years before the torrent of revolutionary events swept him away in another direction. He was so painstaking in preparing his cases that he gained an excellent reputation throughout Virginia. Between 1767 and 1774 he handled over a thousand cases. It was said in jest that Jefferson won practically all of his cases because he always chose the right side![13]

The Making of a Great Scholar

Jefferson drifted away from law as he became increasingly interested in the history of man's efforts to set up a free society. He wondered why the efforts of leaders in the past had so consistently failed. He pored over the carefully collected books in his library, which included many of the classical works of scholars from the previous twenty-five centuries.

In 1770 the Shadwell family home went up in flames and burned every book and paper he owned, but by 1775 he had built his library back up to a thousand volumes. Toward the end of his life, his collection of the finest literature was purchased by the government and became the nucleus for the United States Library of Congress.

His appetite for learning paid handsome dividends as one field of knowledge cross-fertilized with another. He became highly credible in several fields of science. He contrived a whole series of inventions for which he never attempted to secure patents. One of his servants, a trained tinsmith, admired Jefferson's ability to fashion keys, locks, and chains out of brass and iron. One scholar credits him with firing the "signal gun of American paleontology." He also took great interest in the origin, languages, and customs of the American Indians. He amassed a large number of Indian vocabularies as part of his study. He studied architecture; drawings still in existence reflect his highly professional skill.

Fame Comes Early to Jefferson

As the years went by his mind became a scintillating reservoir of expertise in so many fields that it is difficult to find an example of equal accomplishment either then or now. His research was so thorough and his conclusions so carefully drawn that a well-educated traveler from New England, who engaged him in conversation without knowing his identity, later wrote:

"When he spoke of law, I thought he was a lawyer; when he talked about mechanics, I was sure he was an engineer; when he got into medicine, it was evident that he was a physician; when he discussed theology, I was convinced he must

be a clergyman; when he talked of literature, I made up my mind that I had run against a college professor who knew everything."[14]

During August 1774 Jefferson wrote a paper which sent his name skirting across the Atlantic to England. It was called *A Summary View of the Rights of British America.* It provided a legal, historical, and political analysis of the rights of the English colonists in America and accused the Crown of ignoring and abusing those rights. The British government was not accustomed to thinking of Americans as citizens with certain unalienable *English* rights. Jefferson's published pronouncement was distributed throughout America and published in England. It attracted widespread attention, and aroused a considerable amount of bristling indignation in the royal court.

Jefferson was then thirty-one years of age.

A SUMMARY VIEW OF THE
RIGHTS OF BRITISH AMERICA

Revolutionary tract by Thomas Jefferson, July 1774

A SUMMARY VIEW OF THE RIGHTS OF BRITISH AMERICA. SET FORTH IN SOME RESOLUTIONS INTENDED FOR THE INSPECTION OF THE PRESENT DELEGATES OF THE PEOPLE OF VIRGINIA. NOW IN CONVENTION.

By a NATIVE, and MEMBER of the HOUSE of BURGESSES.

WILLIAMSBURG: Printed by CLEMENTINA RIND.

RESOLVED *that... an humble and dutiful address be presented to his majesty begging leave to lay before him... the united complaints of his majesty's subjects in America.... To represent to his majesty that... when he reflects... he is no more than the chief officer of the people, appointed by the laws, and circumscribed with definite powers, to assist in working the great machine of government....*

Single acts of tyranny may be ascribed to the accidental opinion of a day; but a series of oppressions... pursued unalterably through every change of ministers, too plainly prove a deliberate, systematical plan of reducing us to slavery....

Can any one reason be assigned why 160,000 electors in the island of Great Britain should give law to four millions in the states of America, every individual of whom is equal to every individual of them in virtue, in understanding, and in bodily strength?...

While... the people have delegated the powers of legislation... when they are dissolved ... the power reverts to the people, who may use it to unlimited extent.... We forbear to trace consequences further; the dangers are conspicuous....

Open your breast, Sire, to liberal and expanded thought. Let not the name of George the third be a blot in the page of history.

Young Jefferson Goes to Congress

By 1775 the tide of history was running fast. American blood had been shed by British Redcoats at Lexington and Concord on April 19. Then came the Battle of Bunker Hill (actually Breed's Hill) on June 17, where more than 450 Americans were shot or bayonetted. No doubt Jefferson was among those who wondered if King George was suffering from another of the fits of insanity which plagued him from time to time. Nothing seemed to appease the king, neither a proffered payment for the Boston tea nor pleas of loyal submission. He seemed determined to treat Americans as some of his most ferocious enemies.

All civil government was suspended in Massachusetts, and Boston was occupied first by General Gage and later by General Howe as commander in chief of all British troops in America. Like other Americans, Jefferson wondered where it would all end.

Jefferson was sent to the Second Continental Congress in Philadelphia, arriving June 20, 1775. He was one of the youngest members present; only John Jay of New York was slightly younger. In the fall, Jefferson had to leave the Congress because of the death of his eighteen-month-old daughter. His wife and his mother were also very ill.

1776 — The Fateful Year

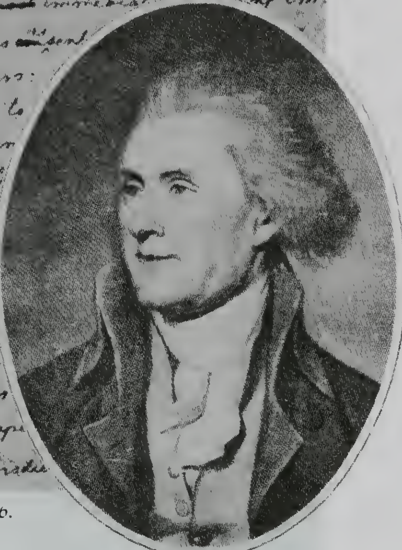
There were dark forebodings as the tide of history moved in upon the American colonies in January of 1776. Word came that the American expedition to capture Quebec had failed. General Montgomery was killed and Benedict Arnold, who had been a hero in this campaign, was wounded. It was only a matter of months before the Americans were driven out of Canada completely.

Jefferson was also extremely concerned about the bad news from Boston. Washington had lost over four thousand of his soldiers. Many of those remaining were sick. Others were disheartened. When their enlistments were up, a mere handful reenlisted. And since the British would not come out and fight, Washington reported that the restless Americans passed much of the time simply fighting among themselves.

King George III

To make matters worse, King George virtually disowned the American colonies. He announced that if the colonies were attacked by foreign foes, Britain would furnish no help. American ships were declared to be "free booty," which meant it would be legal to capture any American vessel on the high seas and take it over, cargo and all. As for the crew, they would be impressed into the British navy.

It was in this dismal setting that Thomas Jefferson commenced what would turn out to be one of the most important years of his life. But he would have scarcely suspected it. His mother died on March 31, which was a great blow to Jefferson. He suffered excruciating migraine headaches for the next five weeks after his mother died.

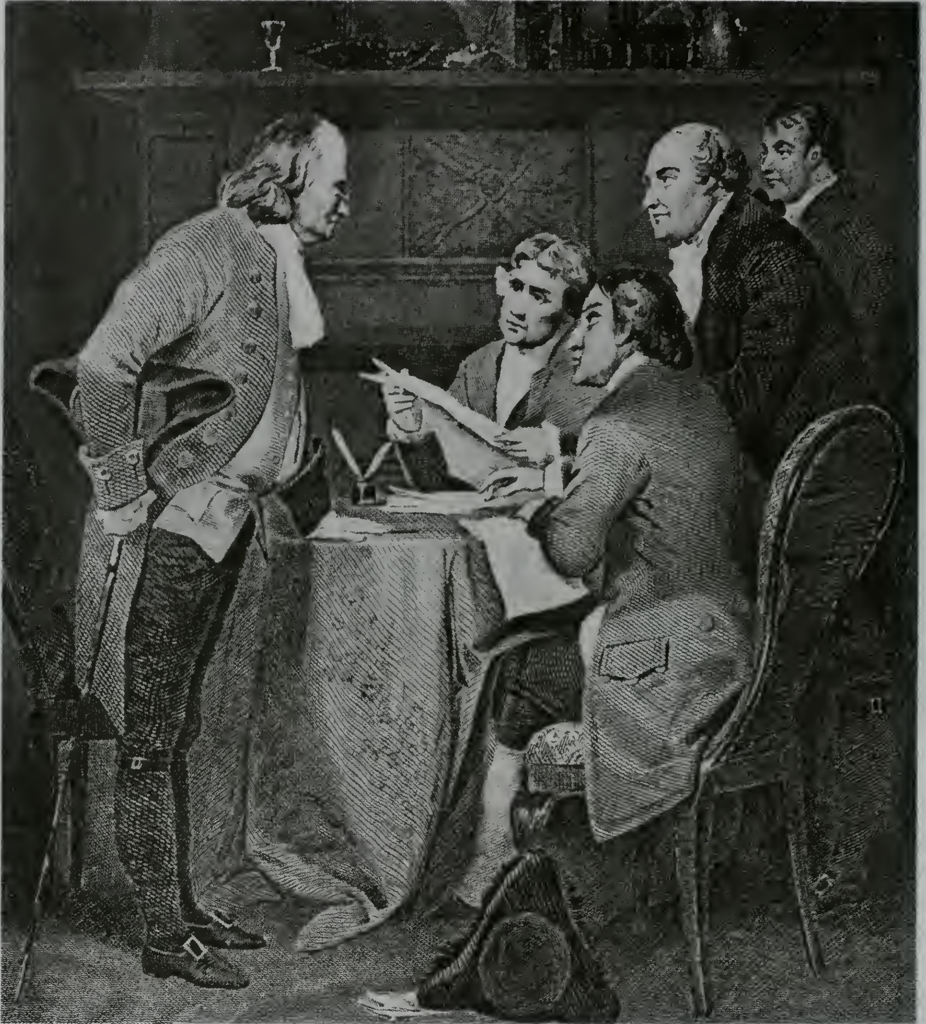


Part of Jefferson's draft of his "first ideas" for a Virginia Constitution, June 1776.
Inset: *Thomas Jefferson.*

His tensions were further aggravated when he read the six drafts which had been submitted for a Virginia constitution. All were defective, even though they had been drafted by such illustrious patriots as John Adams, Richard Henry Lee, Meriwether Smith, George Mason, Carter Braxton, Patrick Henry, and others of high repute. It was obvious that the best minds in the country were still struggling to find a proper formula for the efficient self-government of a free and independent state. Jefferson therefore decided to try his own hand at constitution writing.

In spite of his mourning and migraine headaches, Jefferson wrote three separate drafts during the next five weeks. However, he was robbed of the pleasure of delivering them personally to the legislature in Williamsburg because he was sent as a delegate to Congress. He arrived in Philadelphia on May 14, carrying the third draft in his pocket.

The longer Jefferson stayed in Philadelphia, the worse he felt. He had an intense anxiety to be in Williamsburg. Finally, Jefferson wrote a letter requesting that he be given a leave of absence from Congress so he could lend a hand in writing the Virginia constitution. Fortunately, his request was denied. Had it been otherwise he would have missed the greatest honor of his life — the privilege of writing the Declaration of Independence. Frustrated and disappointed, Jefferson sent his third draft to the Virginia legislature. However, they used only an insignificant portion of it. His constitution would have overturned the whole aristocratic structure of the state. Virginia was not yet ready for such a revolutionary change.



The committee appointed to write a declaration of independence. From left: Benjamin Franklin, Thomas Jefferson, Robert Livingston, John Adams, and Roger Sherman.

The Declaration of Independence

On June 7, 1776, Richard Henry Lee of Virginia introduced the fatal resolution in Congress calling for complete separation from Great Britain. Several states asked for a brief postponement of any final decision in order to get instructions from home. Meanwhile a special committee was appointed to write a formal declaration of independence. The committee consisted of Benjamin Franklin, John Adams, Roger Sherman, Robert Livingston, and Thomas Jefferson.

Jefferson immediately proposed that John Adams prepare the initial draft. John Adams described what happened as follows:

"Jefferson proposed to me to make the draft. I said: I will not. You should do it."

Jefferson: "Oh, no! Why will you not? You ought to do it."

Adams: "I will not!"

Jefferson: "Why?"

Adams: "Reasons enough."

Jefferson: "What can be your reasons?"

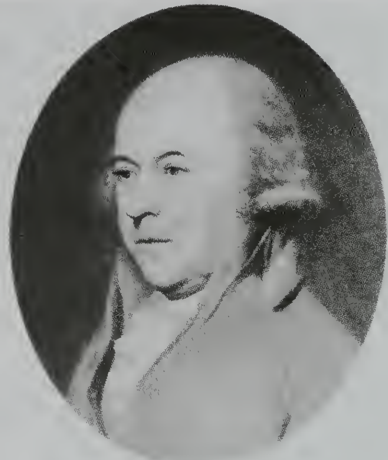
Adams: "Reason first — You are a Virginian, and a Virginian ought to appear at the head of this business. Reason second — I am obnoxious, suspected, and unpopular. You are very much otherwise. Reason third — You can write ten times better than I can."

Jefferson: "Well, if you are decided, I will do as well as I can."[15]

Jefferson's Preparations and Background

It is doubtful that any of the Founders could have brought to this assignment a more profound and comprehensive training in history and political philosophy than Jefferson. Even by modern standards, the depth and breadth of his education are astonishing. Here is a summary of his background which we have already mentioned briefly:

He had begun the study of Latin, Greek, and French at the age of nine. At the age of sixteen he had entered the College of William and Mary at Williamsburg as an advanced student. At the age of nineteen he had graduated and immediately commenced five years of intensive study with George Wythe, the first professor of law in America. During this period he often studied twelve to fourteen hours per day. When he was examined for the bar he seemed to know more than the men who were giving him the examination.



John Adams

By the time Jefferson had reached early adulthood, he had gained proficiency in five languages. He had studied the Greek and Roman classics. He had studied European and English history. He had carefully studied both the Old and New Testaments.

While studying the history of ancient Israel, Jefferson made a significant discovery. He saw that at one time the Israelites had practiced the earliest and most efficient form of representative government. As long as the Israelites followed their fixed pattern of constitutional principles, they flourished. When they drifted from it, disaster overtook them. Jefferson thereafter referred to this constitutional pattern as the "ancient principles."

Jefferson was also surprised to find that the Anglo-Saxons somehow got hold of some of these "ancient principles" and

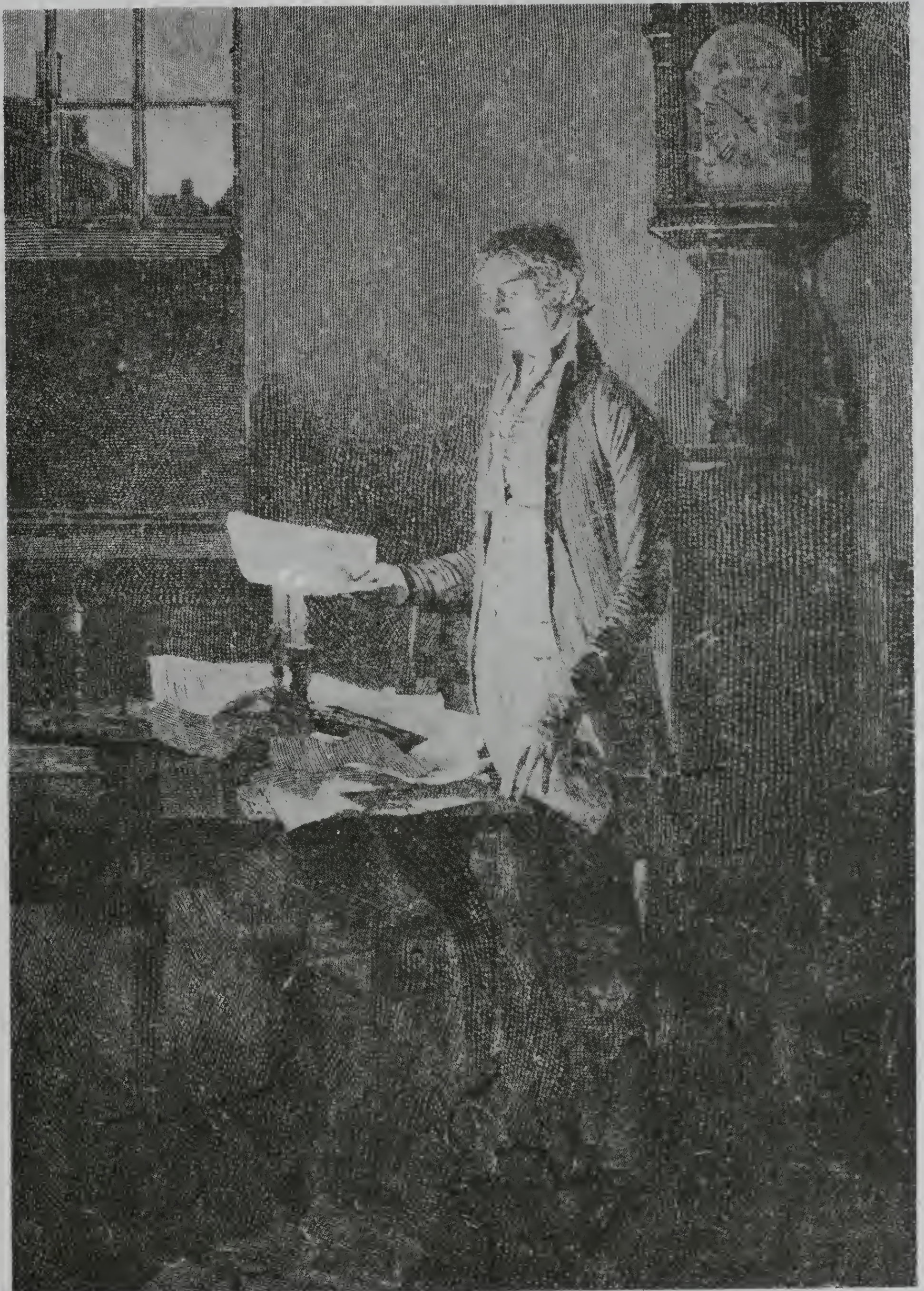
followed a pattern almost identical to that of the Israelites, until around the eighth century A.D. In the next chapter we will discuss the pattern which both of these nations followed. It is interesting that when Jefferson was writing his drafts for the Virginia constitution he was already emphasizing the need to return to the "ancient principles."

Writing the Declaration of Independence

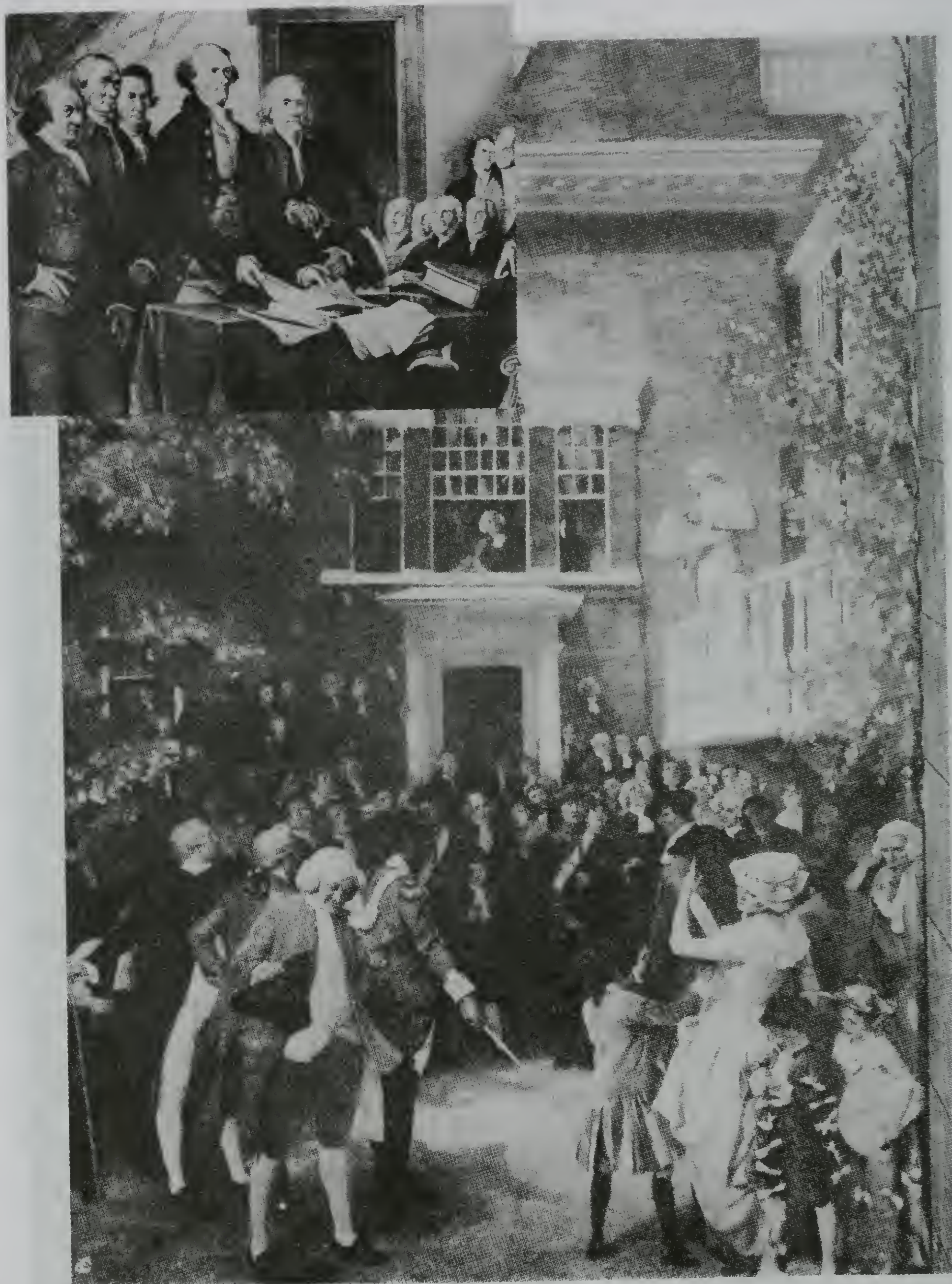
For seventeen days Jefferson composed and revised his rough draft of the Declaration of Independence. The major portion of the Declaration is taken up with a long series of charges against King George III. However, these were nearly all copied from Jefferson's drafts of the Virginia Constitution and his *Summary View of the Rights of British America.* To copy these charges into the Declaration would not have taken him more than a single day. What was he doing the other sixteen days?

It appears that he spent most of the remaining time trying to structure into the first two paragraphs at least eight of the "ancient principles" which he had come to admire. His views on each of these principles are rounded out in other writings, and from these various sources we are able to identify the following fundamental principles in the first two paragraphs of the Declaration of Independence:

1. Sound government should be based on self-evident truths. These truths should be so obvious, so rational, and so morally sound that their authenticity is beyond reasonable dispute.
2. The equal station of mankind here on earth is a cosmic reality, an obvious and inherent aspect of the law of nature and of nature's God.
3. This presupposes (as a self-evident truth) that the Creator made human beings equal in their rights, equal before the bar of justice, and equal in his sight. (Of course, individual attributes and personal circumstances in life vary widely.)
4. These rights which have been bestowed by the Creator on each individual are unalienable; that is, they cannot be taken away or violated without the offender coming under the judgment and wrath of the Creator. A person may have other rights, such as those which have been created as a "vested" right by statute, but vested rights are not unalienable. They can be altered or eliminated at any time.
5. Among the most important of the unalienable rights are the right to life, the right to liberty, and the right to pursue whatever course of life a person may desire in search of happiness, so long as it does not invade the inherent rights of others.
6. The most basic reason for a community or a nation to set up a system of government is to assure its inhabitants that the rights of the people shall be protected and preserved.
7. And because this is so, it follows that no office or agency of government has any right to exist except with the consent of the people or their representatives.
8. It also follows that if a government, either by malfeasance or neglect, fails to protect those rights—or, even worse, if the government itself begins to violate those rights—then it is the right and duty of the people to regain control of their affairs and set up a form of government which will serve the people better.



Jefferson consistently worked into the late night hours as he wrote the Declaration of Independence.



The people of Philadelphia hear the announcement of the Declaration of Independence. Inset: *Jefferson and his fellow committee members present the Declaration to Congress. (From a painting by John Trumbull.)*

The Declaration of Independence Is Adopted

On July 2, 1776, the Congress assembled as an informal "Committee of the Whole" to freely discuss Jefferson's Manifesto of Freedom. A number of changes were suggested and debated. It was the evening of July 4 when the Congress as an official body finally approved Jefferson's somewhat modified document. There were over sixty changes, but not one of the "ancient principles" was deleted.

Neither Jefferson nor the Congress called this document the "Declaration of Independence." It was the people who later gave the Declaration its immortal name.

After approval, the document was sent to a Mr. Dunlap for printing, and a copy was ordered engrossed (in large formal handwriting) for signing. The printer's copy has been lost, but the engrossed copy is preserved for public display in the Archives Building in Washington, D.C. Although Jefferson thought he remembered the delegates signing the document on July 4, it does not appear that the signing began until August 2, when the engrossed copy was ready.

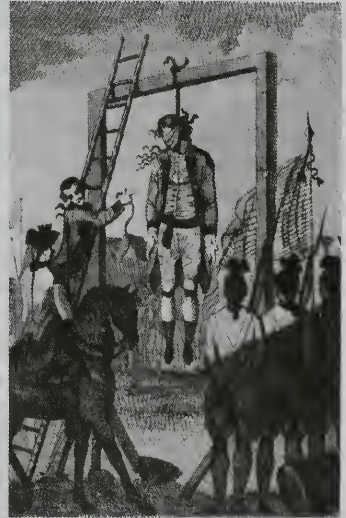
Meanwhile, the Declaration was published by the Pennsylvania *Evening Post* on July 6, and copies were sent to the Committees of Safety in the various states by John Hancock, President of the Congress.

The first public reading of the Declaration was by the Committee of Correspondence in Philadelphia on July 8, 1776. People cheered, the bells rang, and many celebrated all night.

It is interesting that Thomas Jefferson was not identified as the author of this document until many months later. Furthermore, the names of the delegates who signed it were also kept concealed. There was fear of retaliation by the British.

This recalls to mind the final sentence of the Declaration wherein the delegates stated: "And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor."

In a figurative sense the delegates who subscribed to this document signed their names in blood. Had the Americans lost the Revolutionary War and been captured, they undoubtedly would have been tried and summarily convicted of treason. The penalty for high treason was:



Had the American leaders been captured, they could have been hanged for treason.

To be hanged by the head until unconscious.

Then cut down and revived.

Then disembowled and beheaded.

Then cut into quarters.

Each quarter to be boiled in oil.

The remnants were scattered abroad so that the last resting place of the offender would remain forever unnamed, unhonored, and unknown.

James Fedor's rendering of the original proposal for the seal of the United States, as suggested by Thomas Jefferson.

Founders Reveal the Source of the "Ancient Principles"

A short time after the Declaration of Independence was adopted, Thomas Jefferson, John Adams, and Benjamin Franklin were assigned to formulate an official seal for the new nation.

As mentioned earlier, Jefferson — and several of the other Founders, including the Reverend Thomas Hooker, who wrote the constitution. for Connecticut in 1649 — had discovered that the most substantive principles of representative government were those practiced by ancient Israel under the leadership of Moses. Jefferson had also studied the institutes of government of the Anglo-Saxons and had found that they were almost identical to those of the Israelites.

After a brief discussion it was decided that both of these ancient peoples should be represented on the great seal of the United States.

Here is Franklin's description of the way he thought ancient Israel should be portrayed:

"Moses standing on the shore, and extending his hand over the sea, thereby causing the same to overwhelm Pharaoh who is sitting in an open chariot, a crown on his head and a sword in his hand. Rays from a pillar of fire in the clouds reaching to Moses, to express that he acts by command of the Deity. Motto: Rebellion to tyrants is obedience to God."[16]

John Adams described what Jefferson proposed:

"Mr. Jefferson proposed: The children of Israel in the wilderness, led by a cloud by day, and a pillar of fire by night, and on the other side Hengist and Horsa, the Saxon chiefs, from whom we claim the honour of being descended and whose political principles and form of government we have assumed."[17]

Professor Gilbert Chinard, one of the distinguished biographers of Jefferson, states:

"Jefferson's great ambition at that time was to promote a renaissance of Anglo-Saxon primitive institutions on the new continent. Thus presented, the American Revolution was nothing but the reclamation of the Anglo-Saxon birthright of which the colonists had been deprived by

'a long train of abuses.' Nor does it appear that there was anything in this theory which surprised or shocked his contemporaries; Adams apparently did not disapprove of it, and it would be easy to bring in many similar expressions of the same idea in documents of the time."[18]

On August 13, 1776, Jefferson wrote to Edmund Pendleton to convince him that Virginia must abolish the remnants of feudalism and return to the "ancient principles." He wrote:

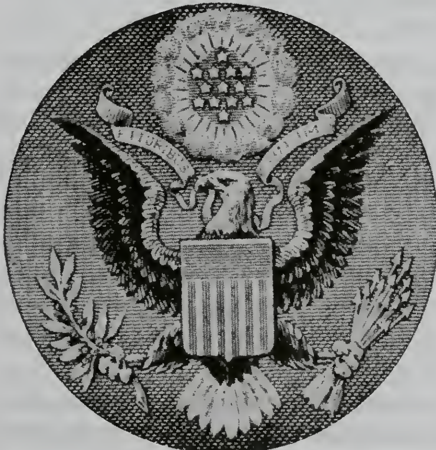
"Are we not better for what we have hitherto abolished of the feudal system? Has not every restitution of the ancient Saxon laws had happy effects? Is it not better now that we return at once into that happy system of our ancestors, *the wisest and most perfect ever yet devised by the wit of man, as it stood before the eighth century?*"[19]

Jefferson studied the language of the Anglo-Saxons so that he might read their laws in the original tongue. In a letter to his old tutor, George Wythe, dated November 1, 1778, Jefferson wrote that "the extracts from the Anglo-Saxon law, the sources of the Common law, I wrote in the original for my own satisfaction; but I have added Latin or liberal English translations."[20]

Congress did not immediately adopt any official seal, and as time went by other committees were appointed. Eventually Congress adopted a simpler seal. It consisted of an American eagle on one side and an unfinished pyramid of thirteen steps on the other (representing the thirteen original colonies).

The pyramid insignia was copied from the fifty-dollar bill of the Continental currency used during the Revolutionary War. At the bottom of the pyramid were inscribed the Roman numerals for 1776, and the popular all-seeing eye of the Creator was implanted over the pyramid, symbolizing the providential power which the Founders felt had continually interceded in behalf of the cause of freedom during the war for independence.

There were also two classical Latin mottoes enscribed on the seal. One was *Annuit Coeptis*—He (God) hath favored our undertaking. The other was *Novus Ordo Seclorum*—the New Order of the Ages, or the Beginning of a New Age.



The two sides of the official seal of the United States.

The Battle of New York

Meanwhile, by late August 1776, a threatening disaster was descending on the American military forces at New York. General Washington had warned the Congress that without a navy it would be impossible for him to adequately defend New York, though he promised to muster the strongest resistance possible.

The British soon attacked with the largest land force ever seen in America, supported by the largest naval armada the country had ever seen. By August 29 the Americans had been driven from Long Island, and by September 12 they had been forced to abandon lower Manhattan and New York City. The city had a population of 22,000, which made it the second largest city in the country — next to Philadelphia. Washington retreated once again.

Jefferson Resigns from Congress

It was under these disastrous circumstances that Thomas Jefferson shocked his colleagues by suddenly resigning from Congress. Right when every shred of ingenuity was needed in the Congress to contrive ways and means of helping Washington, one of the bright lights from that hard-pressed assemblage in Philadelphia announced that he was leaving for home.

There were two important reasons why Jefferson left. The first was the lingering illness of his wife, which had become alarming. With two recent deaths in the family, he felt tremendous pressure to be at home where he could manage the needs of his loved ones.

Jefferson's second motivation for leaving Congress was his feeling that he could be of more value to the country in Virginia than in Philadelphia. Virginia had adopted a constitution which was reprehensible to Jefferson, and the thought kept gnawing at his soul that he was perhaps the one person who knew what to do about it.

As for the battle in New York, Jefferson had the instinctive conviction that ultimately the Americans were going to win and the states would be free. However, he feared they would not know what to do with their freedom. He did not feel they were prepared either psychologically or constitutionally to deal with the multitude of problems that are inherent in the plenary powers which freedom imposes on a liberated people. It was Jefferson's hope that somehow he might guide Virginia (the largest of the states) so that her example might be a model for the other states.

Jefferson's Self-Appointed Mission to Make Virginia a Model State

Just about the time matters had improved with his family, Jefferson was offered an appointment to serve as a commissioner for the United States in Paris. He rejected this honor and chose, instead, to get himself elected to the state assembly in Williamsburg.

When the new legislative session opened early in October 1776, Jefferson literally smothered the Virginia House of Delegates with a portfolio bulging with new bills. He left no doubt among the delegates as to his intentions. Jefferson said it was his hope that he could arouse the delegates to support an effort to set up "a system by which every fiber would be eradicated of ancient or future aristocracy, and a foundation laid for a government truly republican."[21]

Many of the delegates, including his closest friends, argued that there would be time enough to do all of this reforming

House of Burgesses in Williamsburg, Virginia, where Jefferson proposed a number of sweeping changes in Virginia's legal code.

after the war was over, but Jefferson said any delay would be a mistake. They must adopt these badly needed changes during the heat of the ensuing battle and strike while the iron was hot. As he later said:

"It can never be too often repeated that the time for fixing every essential right on a legal basis is while our rulers are honest, and ourselves united. From the conclusion of this war we shall be going downhill. It will not then be necessary to resort every moment to the people for support. They will be forgotten, therefore, and their rights disregarded. They will forget themselves, but in the sole faculty of making money, and will never think of uniting to effect a due respect for their rights. The shackles, therefore, which shall not be knocked off at the conclusion of this war will remain on us long, will be made heavier and heavier, till our rights shall revive or expire in a convulsion."[22]

Jefferson's legal reforms were designed to eliminate all types of cruel and unusual punishment.

Jefferson's Reforms

Jefferson's unusual intensity and aggressiveness in seeking these reforms induced the delegates to approve a number of committees to appease Jefferson and allow the house to get on with their regular business. In a period of two years Jefferson gathered around himself a few sympathetic friends, and personally wrote enough legislation to satisfy any ten delegates during a lifetime. However, most of this legislation involved such sweeping reforms that the delegates were too stunned to pass it. Nevertheless, Jefferson's close friend, twenty-five-year-old James Madison, carried on after Jefferson was elected governor of Virginia in 1779 and after he left to become minister to France in 1784.

They both seemed to sense that before a genuine republican form of government could be instituted in Virginia, a campaign must be launched to clear out the accumulated rubbish of feudalism, aristocracy, and slavery, and the worst parts of the British statutory law which had been inherited by Virginia from England.

Although it took many years to get these reforms adopted, here is what Jefferson initiated in a brief period of only two years:

1. He set up a formula for abolishing slavery by peaceful means within one generation.
2. He introduced new legislation to revise the civil code.
3. He introduced new legislation to revise the criminal code.
4. He introduced a bill to abolish primogeniture — a feudal law requiring a parent to bestow his entire estate on his eldest son whether he was competent or not. Primogeniture was designed to preserve the aristocracy.
5. He introduced a bill to abolish entail estates — a feudal law requiring large tracts of land (sometimes a million or more acres) to be maintained intact in a family because of the feudal obligations to the king or some high ranking lord or baron. Entail estates was also designed to preserve the aristocratic class.
6. He introduced a bill to eliminate the death penalty, except for murder, treason, and certain military crimes in time of war.
7. He introduced a bill to eliminate cruel and unusual punishment.
8. He introduced a bill to eliminate the official state church so there could be equality for all religions.
9. He introduced a bill to eliminate the payment of a tithing tax to support a particular church.

In June 1783, just as the Revolutionary War came to a close, Jefferson composed his fourth and final draft for a sound system of government in Virginia. He took it with him in 1784 when he accepted the appointment as minister to France and finally published it there.

Jefferson knew from experience that the leaders of his beloved home state of Virginia were too entrenched in their traditional culture to accept this constitution. Nevertheless, he wanted to capture the essential ideas which would improve certain aspects of his first three drafts and serve as a frame of reference for the future.

A statue of Thomas Jefferson located in the University of Virginia, which he helped found.

Jefferson's Vision of a Future Ideal State

Unless we discover what was churning in the mind of Jefferson during this tempestuous period of revolution and reform, it will be impossible to appreciate either his profound hopes or his deep forebodings in case Virginia should fail to embrace the things he was trying to teach them.

In the next chapter we shall attempt to summarize in a few pages those "ancient principles" that had taken Jefferson half a lifetime to learn. Without these concepts, it would be as difficult for us to comprehend the anxieties of Jefferson during this period as it was for his fellow delegates at Williamsburg.

1. Henry S. Randall, *The Life of Thomas Jefferson*, 3 vols. (New York: Derby and Jackson, 1859), 1:13.

2. Andrew M. Allison et al., *The Real Thomas Jefferson*, 2d ed. rev. (Washington: National Center for Constitutional Studies, 1983), p. 12.

3. Albert Ellery Bergh, ed., *The Writings of Thomas Jefferson*, 20 vols. (Washington: Thomas Jefferson Memorial Association, 1907), 12:197. Hereafter cited as Bergh.

4. William E. Curtis, *The True Thomas Jefferson* (Philadelphia: J.B. Lippincott Company, 1901), p. 24.

5. Dumas Malone, *Jefferson the Virginian* (Boston: Little, Brown and Company, 1948), p. 58.

6. Bergh, 1:3.

7. Sarah N. Randolph, *The Domestic Life of Thomas Jefferson* (New York: Harper and Bros., 1871), p. 31.

8. Bergh, 14:231.

9. Ibid., p. 85.

10. Ibid., 1:5.

11. Curtis, *The True Thomas Jefferson*, p. 123.

12. Bergh, 4:12.

13. Randolph, *The Domestic Life of Thomas Jefferson*, p. 40.

14. Curtis, *The True Thomas Jefferson*, pp. 358–59.

15. Charles Francis Adams, ed., *The Works of John Adams*, 10 vols. (Boston: Little, Brown and Co., 1850–56), 2:51n.

16. Richard S. Patterson and Richardson Dougall, *The Eagle and the Shield: A History of the Great Seal of the United States* (Washington: U.S. Department of State, 1976), p. 16.

17. Ibid., p. 18.

18. Gilbert Chinard, *Thomas Jefferson: The Apostle of Americanism* (Ann Arbor, Mich.: University of Michigan Press, 1964), pp. 86–87.

19. Julian P. Boyd, ed., *The Papers of Thomas Jefferson*, 20 vols. by 1982 (Princeton, N.J.: Princeton University Press, 1950–), 1:492. Hereafter cited as Boyd.

20. Ibid., 2:504.

21. Bergh, 1:73.

22. Ibid., 2:225.

1776

CHAPTER

DISCOVERY OF THE ANCIENT PRINCIPLES

Although Jefferson appears to have been the first of the explorers to take the long pilgrimage into the past—seeking the golden nuggets of "ancient principles" on which to structure a modern republic—many of the other Founders soon followed.

In addition to Jefferson, that distinguished list would have to include, among others, such memorable names as James Madison, Benjamin Franklin, Samuel Adams, John Adams, John Jay, Alexander Hamilton, George Wythe, and James Wilson. They were not only profound scholars and widely read, but they exchanged correspondence and conversations which cross-fertilized their varied perspectives for a quarter of a century before they tried to put it all together in the Constitution.

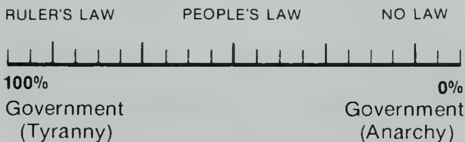
In this chapter we shall discuss some of their fundamental thinking. In the minds of the Founders, these ideas were as basic to sound political science as calculus is to higher mathematics.

Measuring Government

Take, for example, their method of measuring government.

The Founders would have been greatly puzzled by our modern mismeasurement which puts communism at the extreme "left" and fascism at the extreme "right" —as though they were opposites. In reality they are simply different names for similar forms of despotism — the police state. They both belong together on the side of the spectrum representing despotic government.

The Founders had a far more satisfactory scale on which to measure government. They said at one extreme we have "too little government," and at the other extreme we have "too much government." Or, to express it politically, we have anarchy at one extreme and tyranny at the other. If these were portrayed visually, they might look something like this:



It is interesting to read what the Founders had to say about these two extremes. They despised "tyranny" but considered mobocracy or "anarchy" even worse. They felt the greatest challenge to civilized man is discovering some method of structuring a government, under the control of the people, which could eliminate both mobocracy and tyranny. They felt that the formula must provide enough government to insure order and justice but not so much government that it could abuse the people. They referred to this as the "medium point" or balanced center between anarchy and tyranny.

Many times in the past, a suffering people had risen up in revolutionary indignation to throw off the yoke of a cruel tyrant, but each time a tragic thing would happen. Without any knowledge of political science, based on sound principles of self-government, the people would soon find themselves quarreling, bickering, and eventually fighting one another. Out of this miasma of anarchy and chaos a cry would gradually arise for someone to take over and "restore order." Always, there seemed to be some strong man, anxious to assume command. Taking control by force, he would soon have order restored, but in the process the people would be right back where they were before — under a tyrant.

The Swinging Pendulum

This historical swinging of the pendulum from tyranny to anarchy and then back again to tyranny is the history of the French Revolution. The French revolted in 1789, for good cause, but the extremists seized control and began executing around four thousand of the best leadership in the country — Lafayette barely escaped — and soon chaos began to reign as anarchy and mobocracy spread throughout the country. Finally, in utter desperation, they appealed to Napoleon to restore order. They even signed a contract with him to make Napoleon and his family the emperors of France forever. In short order, they were back in the hands of total dictatorial authority, precisely where they had been before.

This is exactly what could have happened to the American revolution if Washington had agreed to be king toward the close of the Revolutionary War. Some of the foremost financial interests in America were ready to combine with the military to seize power.

Napoleon, who entered the French scene when the pendulum was ready to swing from anarchy to tyranny. (Painting by J. Louis David.)

Fortunately, Washington knew the pendulum pattern. He not only refused the honor of becoming George I of America, but he pleaded with the military to be patient with Congress until their political leaders had worked the knots out of the system.

Washington knew what his fellow founders were seeking. Somehow they had to stop the pendulum from swinging back to a monarchy. They had to set up a system where there was enough government, but not too much. They had to stop the pendulum in the balanced center of the political spectrum. Obviously the Founders were not "extremists"—either right or left. It is interesting what they had to say about that balanced center.

Two Extremes Equally Dangerous

Jefferson: "We are now vibrating between too much and too little government, and the pendulum will rest finally in the middle."[1]

Iredell: "There are two extremes equally dangerous to liberty. These are *tyranny* and *anarchy*. The medium between these two is the true government to protect the people. In my opinion, this Constitution is well calculated to guard against both these extremes."[2]

Washington: "There is a natural and necessary progression from the extreme of anarchy to the extreme of tyranny."[3]

Wilson: "Liberty and happiness have a powerful enemy on each hand; on the one hand tyranny, on the other licentiousness [anarchy]. To guard against the latter, it is necessary to give the proper powers to government; and to guard against the former, it is necessary that those powers should be properly distributed."[4]

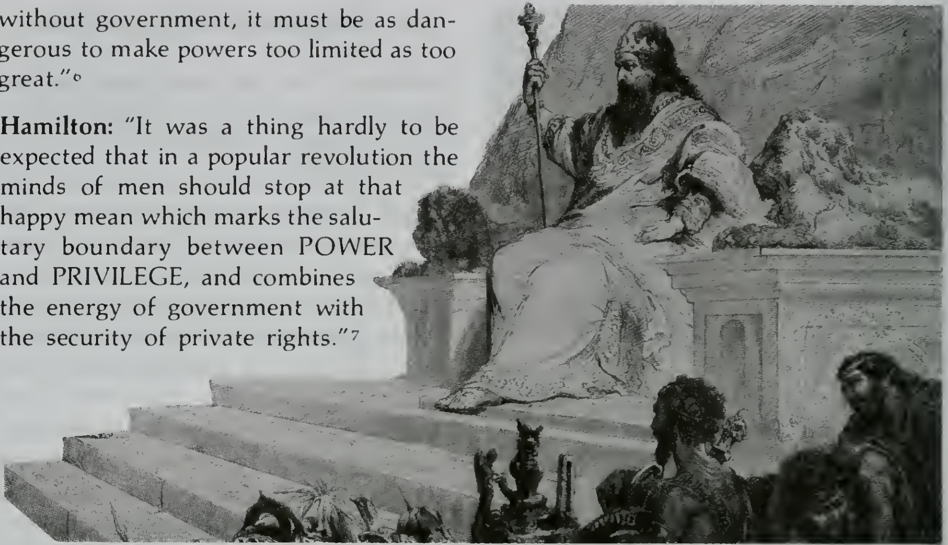
Smilie: "I agree that it is, or ought to be, the object of all governments to fix upon the intermediate point between tyranny and licentiousness ... [lawlessness or anarchy]."[5]

Avoid Too Much or Too Little

Nicholas: "Powers, being given for some certain purpose, ought to be proportionate to that purpose, or else the end for which they are delegated will not be answered. It is necessary to give powers, to a certain extent, to any government. If a due medium be not observed in the delegation of such powers, one of two things must happen: if they be too small, the government must moulder and decay away; if too extensive, the people must be oppressed. As there can be no liberty

without government, it must be as dangerous to make powers too limited as too great."[6]

Hamilton: "It was a thing hardly to be expected that in a popular revolution the minds of men should stop at that happy mean which marks the salutary boundary between POWER and PRIVILEGE, and combines the energy of government with the security of private rights."[7]



History has been dominated by Ruler's Law, where all power rests with the central government.

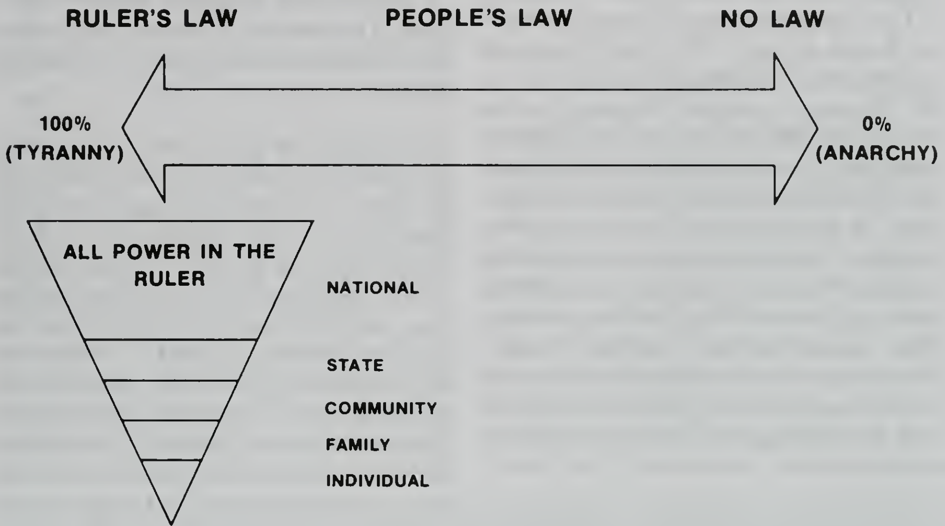
Two Opposite Systems of Law

Historically, the Founders knew they were pioneering new territory. In the past, ninety-nine percent of the human race has had to live out their lives under what might be described as Ruler's Law. This is a system with all power in the ruler. Ruler's Law comes under different names:

1. A monarchy, which is a royal government by "the one."
2. An autocracy, which is also a government by "the one" or a dictator.
3. A plutocracy, which is government by an exclusive, wealthy class.
4. An aristocracy, which is government by those with inherited titles or those who belong to a privileged class.
5. An oligarchy, which is government by an exclusive few.
6. An empire, which is an aggregate of kingdoms ruled by a monarch called an emperor.
7. A military dictatorship, which is government by one or a few top military leaders.

Ruler's Law is a form of government which allows total authority and power to rest with the central government. The ruler or ruling group makes the law, interprets the law, and enforces the law. This was Madison's definition of tyranny. He said: "The accumulation of all powers —legislative, executive, and judiciary— in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."[8]

The very opposite to Ruler's Law is People's Law, which we will discuss in a moment. For the present let us get better acquainted with the ingredients of Ruler's Law. The Founders considered it to be the greatest enemy of self-government and freedom that has ever been contrived by the mind of man. In the following illustration we see how its broad power base of strong despotic central government hangs menacingly over the people.



Under Ruler's Law, government assumes all power and imposes its will on the people.

The Founders had studied Ruler's Law and knew its chief characteristics. They are as follows:

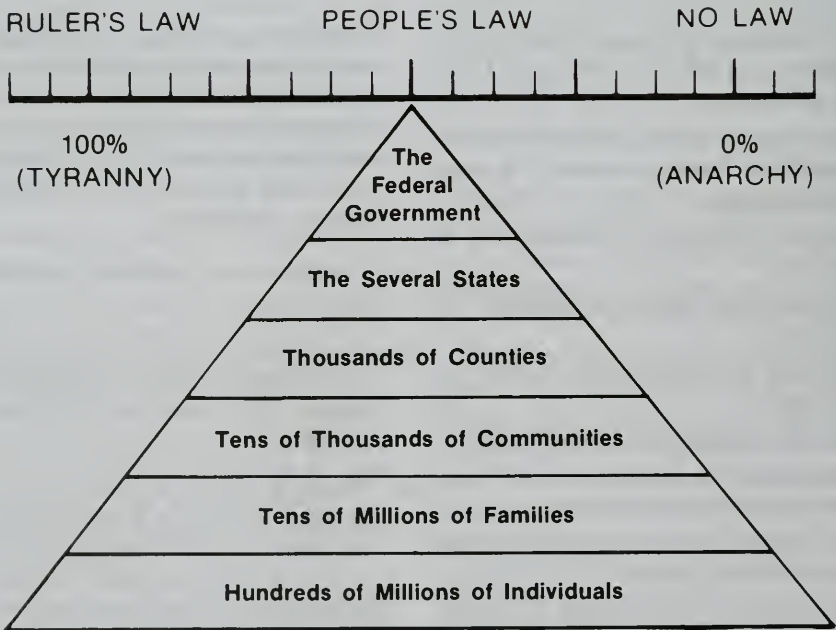
1. Government power is exercised by compulsion, force, conquest, or legislative usurpation.
2. Therefore, all power is concentrated in the ruler.
3. The people are treated as "subjects" of the ruler.
4. The land is treated as the "realm" of the ruler.
5. The people have no unalienable rights.
6. Government is by the rule of men rather than the rule of law.
7. The people are structured into social and economic classes.
8. The thrust of government is always from the ruler down, not from the people upward.
9. Problems are always solved by issuing new edicts, creating more bureaus, appointing more administrators, and charging the people more taxes to pay for these "services." Under this system, taxes and government regulations are always oppressive.
10. Freedom is not considered a solution to anything.
11. The transfer of power from one ruler to another is often by violence—the dagger, the poison cup, or fratricidal civil war.
12. The long history of Ruler's Law is one of blood and terror, both anciently and in modern times. Those in power revel in luxury while the lot of the common people is one of perpetual poverty, excessive taxation, stringent regulations, and a continuous existence of misery.

Search for the Balanced Center

The Founders were all born citizens of the British empire, which was structured under a limited form of Ruler's Law. In the American colonies, however, some elements of People's Law were gradually emerging. The oppressive rule of Britain was suddenly terminated with the Declaration of Independence, but it took the Founders eleven more years before they could get themselves properly established under a system of People's Law. Like any other people who have suddenly become involved in a war of independence, they found themselves suddenly endowed with freedom and did not know what to do with it.

Nevertheless, several of them, especially Jefferson, had done enough research to develop an instinct for the task. They knew they had to get the system firmly entrenched in the balanced center of the political spectrum under People's Law. The political structure they visualized looked something like the diagram below.

Note that the power base is in the people, with a hierarchy of power rising out of them to secure their rights. Jefferson described it in the Declaration of Independence when he said: "To secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.... Whenever any form of government becomes destructive of these ends, it is the *right of the people* to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."



Under People's Law, which is in the balanced center of the Founders' political spectrum, governmental power on every level comes from the people themselves.

The Extreme Exertion Required to Write a Sound Constitution

In 1775, when the leaders of Virginia saw that the king was disowning his American colonies and treating them like enemies, they recognized that they might be forced into a state of independence sooner than they had expected. The task of self-government had some frightening prospects because if their constitution failed to hold the people together, violent chaos and anarchy could result.

As we have pointed out earlier, by 1776 a total of six drafts had been proposed for a state constitution in Virginia. Since Virginia was the largest state, many expected her to lead the way. However, Jefferson read all six drafts and was alarmed. They were all defective in many different ways.

The Two Ancient Examples

It will be recalled that Jefferson had already discovered the basic pattern for a model constitution by studying two ancient peoples who had both lived under People's Law. He had found that ancient Israel was the first nation in history to have a system of representative government; then he discovered that 1,500 years later the Anglo-Saxons were living under a system which was almost identical. Both Franklin and Jefferson later wrote that these people were the source

The ancient Anglo-Saxons practiced a form of People's Law.

of the "ancient principles" which were the "wisest and most perfect ever yet devised by the wit of man."[9]

Jefferson was quoted as stating that it was from the Anglo-Saxons that "we claim the honor of being descended and whose political principles and form of government we have assumed."[10]

A brief study of each of these ancient peoples is profitable in acquiring a deeper appreciation of the source of their great ideas and the pattern which eventually evolved into the Constitution of the United States.

First, let us turn briefly to the history of ancient Israel.

What Fascinated the Founders About Ancient Israel

According to chronologists, the Israelites came out of Egypt between 1490 and 1290 B.C. They were led by Moses, a man of great notoriety in their day because he had spent forty years in the palace of the Pharaoh, and Josephus states that he was being groomed to succeed the Pharaoh on the throne. However, an incident occurred involving Moses in the death of an Egyptian taskmaster, forcing him to flee to the area of the Aqaba Gulf where he met Jethro, a spiritual leader of the Midianites. Moses married the daughter of Jethro and served him as a

When the Israelites fled Egypt, Moses established their government under a form of People's Law.

shepherd for the next forty years. It was at the age of eighty that Moses received his mandate to lead the Israelites out of Egypt. Only after a strenuous journey and several near disasters was he able to bring this multitude to the lower part of the Sinai Peninsula along the Horeb range.

At this point Jethro came to visit Moses to see how he was governing such a large body of people. The hosts of Israel were no small tribal migration. The census in the Book of Numbers gives the number of Israelites capable of serving in the army as 600,000. Counting those who were older and younger, plus the women (who would be at least as many as the men), it is estimated that the Israelites could have numbered at least three million.

The problem with Moses was that he had never been taught to govern a large population except by Ruler's Law. In fact, he had been trained in Ruler's Law at Pharaoh's palace for upwards of forty years. Consequently, when Jethro watched Moses trying to handle the problems of all these people alone, he was astonished.

Below is a graphic illustration of what Moses was trying to accomplish by himself.

Moses Learns How to Organize the Israelites Under People's Law

Jethro patiently watched Moses struggle all day long wrestling with a thousand bits of trivia and then retire to his tent at night in total exhaustion.

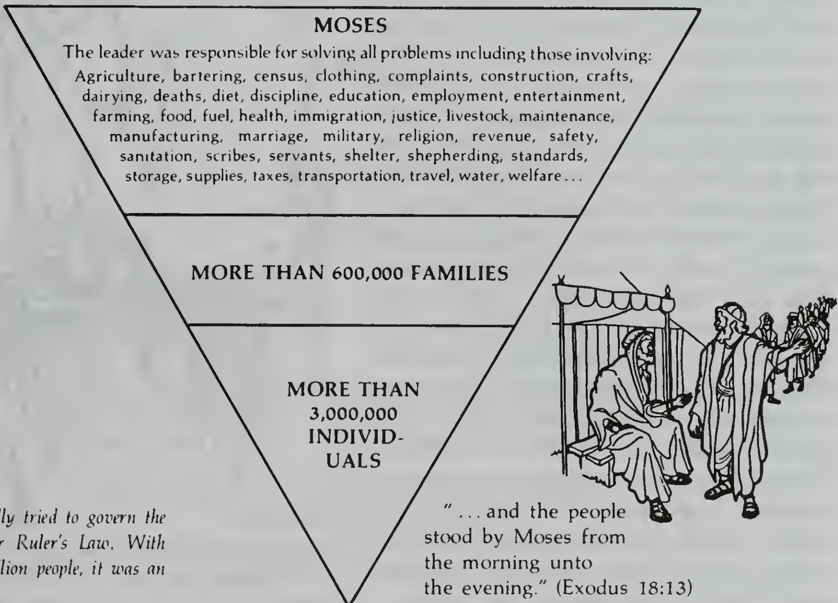
"And when [Jethro] saw all that he did to the people, he said, What is this thing that thou doest to the people? Why sittest thou thyself alone, and all the people stand by thee, from morning unto even?

"And Moses said unto his father-in-law ... they come unto me and I judge between one and another.... "

Of course, all of this had the highest motivation and the best possible intentions, but it did not please the aged Jethro at all. He therefore said to Moses:

"The thing that thou doest is not good.

"Thou wilt surely wear away, both thou,



Moses originally tried to govern the Israelites under Ruler's Law. With some three million people, it was an awesome task.

and this people that is with thee: for this thing is too heavy for thee: thou art not able to perform it thyself alone.

"Hearken now unto my voice, and I will give thee counsel."[11]

Moses later describes what he was instructed to have the people do. He went before the people and said:

"How can I myself alone bear your cumbrance, and your burden, and your strife?

"Take you wise men, and understanding, and known among your tribes, and I will make them rulers over you."[12]

Notice that the people themselves were to "take" or choose from among them those who were best known for their wisdom and understanding, and bring them to Moses for final certification or ratification as rulers and judges.

A Model of Representative Government

As we shall see in a moment, what Moses actually did was to divide the people (consisting of around 600,000 families) into groups of ten families each. Each of these groups containing ten families elected its leader. This first step alone gave Moses 60,000 newly elected leaders to assist him. But that was only the beginning. These groups were combined together in groups of fifty families and they once more elected a leader for each of these groups. This gave Moses another 12,000 elected leaders to help him. The next step was to combine the above groups into combinations of a hundred families. These larger groups also elected leaders, which gave Moses 6,000 more leaders to help him. Finally all of these combinations were put together in groups of a thousand families. When these last groups had each elected a leader, it gave Moses 600 more leaders of top caliber to help govern the people.

Now add all of these leaders together and we see what People's Law did to give the Israelites efficient and practical government. Instead of trying to rule over the people alone, Moses suddenly found himself with 78,600 elected leaders to help him administer the affairs of the people.

After the people had chosen from among their tribal families those in whom they had the most confidence, Moses confirms that he had arranged the people as we have described above. Said he:

"So I took the chief of your tribes, wise men, and known, and made them heads over you, captains over thousands, and captains over hundreds, and captains over fifties, and captains over tens, and officers among your tribes."[13]

Moses remained the religious and secular leader of the Israelites —but the people elected some 78,600 additional leaders to assist him.

Strong Local Self-Government

The emphasis under this system was strong local self-government with problems being solved to the greatest possible extent on the level where they originated. However, if a leader in charge of ten families could not solve a problem, he could take it to the leaders in charge of the fifty families of which he was a part. Where necessary it could go to those in charge of a hundred families or even a thousand families. Only in the greatest extremity did it go to Moses. As the record says: "The hard cases they brought to Moses, but every small matter they judged themselves."[14]

This new system rapidly dispersed the current of confusion and frustration which had been swirling around Moses. As problems began to be solved on the level where they originated, a spirit of relative peace settled on the people, as Jethro had predicted when he first gave Moses the key to this system of representative government under People's Law.

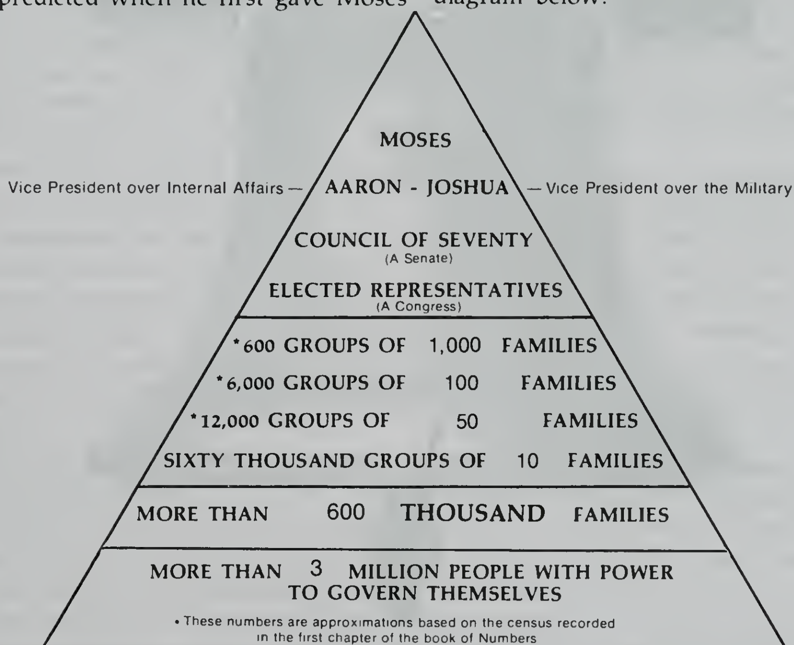
Furthermore, it was popular. As Moses later recorded, "And ye answered me, and said, The thing which thou has spoken is good for us to do."[15]

Hierarchy of a Republic

It is apparent from the record that the delegates or "elders" from the people met at various intervals as a type of congress or house of representatives.

There was also a permanent council of seventy chosen men who acted very much like a senate.

Moses, himself, had the benefit of two immediate assistants or vice-presidents. One had charge of internal affairs and the other was in charge of the military forces and all other matters relating to defense. Altogether, the organization of ancient Israel could be portrayed as shown in the diagram below:



Under People's Law, the burden (and power) of governing the Israelites was distributed among all.

Lessons the Founders Learned from People's Law Under the Israelites

As we analyze the details of the administration of People's Law during the era of the ancient Israelites, we discover numerous principles of government that were not only identical to those of the Anglo-Saxons, but that are applicable to our own day. Here are some of the more obvious aspects of their culture after they were reorganized according to the system recommended by Jethro.

1. First of all, they were set up as a commonwealth of freemen. The whole emphasis of Israel's new system was reflected in the proclamation: "Proclaim liberty throughout all the land unto all the inhabitants thereof."[16]

This proclamation became part of the American heritage when it was emblazoned on what became known as the Liberty Bell.

The inscription on the Liberty Bell recalls Israel's system of People's Law: "Proclaim liberty throughout all the land unto all the inhabitants thereof."

Whenever the Israelites fell into the temptation to have slaves or bond-servants, they were reprimanded. Around 600 B.C., a reprimand was given through Jeremiah: "Ye have not hearkened unto me, in proclaiming liberty, every one to his brother, and every man to his neighbor: behold, I proclaim a liberty for you, saith the Lord."[17]

2. Fundamental to the entire system of People's Law was a strong commitment to a very basic code of solid morality.

Similarly, the Founders continually emphasized this aspect of constitutional government in a free society. As Benjamin Franklin said:

"Only a virtuous people are capable of freedom. As nations become corrupt and vicious, they have more need of masters."[18]

John Adams was equally explicit:

"Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other."[19]

Samuel Adams added a final warning:

"Neither the wisest constitution nor the wisest laws will secure the liberty and happiness of a people whose manners are universally corrupt."[20]

3. The Israelites under People's Law were organized in small, manageable units where all of the adults had a voice and a vote.
4. There was major emphasis on strong local self-government.
5. They had a system of honest money based on gold and silver according to weight and a strict requirement of honest weights and measures. (See Deuteronomy 25:13–15.)
6. The land was looked upon as a private stewardship of the people, not the government.
7. The rights of property were protected.
8. The rights of life and private liberty were protected.
9. All leaders were selected with the consent of a majority of the people.[21]
10. All laws came into force only when approved by a majority of the people or their representatives.[22]
11. Accused persons were presumed to be innocent until proven guilty. Evidence had to be strong enough to remove any question of doubt. Borderline cases were decided in favor of the accused and left to the judgment of God. (For example, see the law of witnesses, Deuteronomy 19:15; 24:3.)
12. The entire code of justice was based primarily on reparation to the victim rather than fines and punishment by the commonwealth. (Reference to this procedure will be found in Exodus, chapters 21 and 22.) The one crime for which no "satisfaction" could be given was first-degree murder. The penalty was death.[23]
13. The main thrust of government was from the people upward; only in a time of temporary crisis was the thrust from the government down. (The Founders included this in the Constitution under the war powers.)
14. The government was required to operate according to principles of law, not the whims of men.
15. Because this system expressed the will of the majority of the people, it allowed power to be transferred from one regime to another by peaceful means.

Howard B. Rand, an American lawyer, reviewed these principles and wrote:

"When the time came for the United States of America to adopt a constitution,

Settlements of Angles, Saxons and Jutes in Britain about 600.

our forefathers modeled it after the perfect Israelite system of administration."[24]

All of this now leads us to Jefferson's second field of careful study — the Anglo-Saxons.

The Mystery of the Anglo-Saxons

During the 1700s, one of the most fascinating and popular studies in England and America was unraveling the mystery of the Anglo-Saxons. Even today, English historian Sharon Turner, who wrote his three-volume classic in the days of the Founders, is still considered a leading authority on these amazing people who came from around the Black Sea in the first century B.C. and spread all across Northern Europe. In fact, they were the best organized, best governed people in their day. They not only conquered or intermarried with the royal families of every northern European country, but they set out in their open boats to chase the Irish out of Iceland, discover Greenland, and even establish temporary settlements in what is now Canada.

But the most important thing to Jefferson, Franklin, John Adams, and others who studied their culture was their institutes of constitutional government which were almost identical with those of ancient Israel.

The Anglo-Saxons first brought their culture to Britain around A.D. 450 when two brothers, Hengist and Horsa, were invited by the king of Kent to bring their relatives to southern Britain and fight off the king's enemies. The Anglo-Saxons were not only successful in this military venture, but they liked Britain so well they decided to stay. Before long they had virtually taken over the island of Britain and changed its name to England (Angloland or Engel-land).

Jefferson Studied the Anglo-Saxons in Their Own Language

As we have already pointed out, Thomas Jefferson became remarkably proficient in five languages. One of them was the language of his ancestors, the Anglo-Saxons. He learned this language so he could study their laws in their original tongue. They not only had the major elements of People's Law, but they were organized and governed by principles similar to those of Moses. He made copies of the Anglo-Saxon laws and sent some of them to friends, along with his own translation.

His admiration for these laws is expressed in a letter to Edmund Pendleton

dated August 13, 1776, when he wrote:

"Are we not better for what we have hitherto abolished of the feudal system: Has not every restitution of the ancient Saxon laws had happy effects? Is it not better now that we return at once into that happy system of our ancestors, *the wisest and most perfect ever yet devised by the wit of man,* as it stood before the eighth century?"[25]

Some Interesting Aspects of the Anglo-Saxon Culture

Many have thought the Yinglings, or Anglo-Saxons, included a branch of the ancient Israelites because they came from the territory of the Black Sea (where the Ten Tribes disappeared), and because they preserved the same unique institutes of government as those which were given to the Israelites at Mount Sinai. But whether related or not, there is certainly irrefutable evidence of a cross-fertilization of laws and cultural values between these two peoples.[26]

Here are some examples:

1. The Anglo-Saxons considered themselves a commonwealth of freemen.
2. They organized themselves into units identical to those of the Israelites.
   a. The head of 10 families was called a tithing-man.
   b. The head of 50 families became an obscure office but may have been a vil-man, or head of the village.
   c. The head of 100 families was called the hundred man.
   d. The head of 1,000 families was called the eolderman, later shortened to earl. The territory occupied by 1,000 families was called a shire, and the administrative assistant to the earl was called the "shire reef." We pronounce it sheriff.
3. All laws, as well as the election of leaders, had to be by the common consent of the people.
4. Authority granted to a chieftain in time of war was extremely limited and was taken away from him as soon as the emergency had passed.
5. Their system of justice was based on payment of damages to the victim rather than calling it a crime against the whole people.

When law books of both England and colonial America were crammed with bad procedures, unjust practices, and cruel punishments, the statutes of the Anglo-Saxons came to the Founders like a breath of fresh air. Here were "ancient principles" which could be employed to the advantage of the Founders as they developed their new success formula. To better appreciate the perspective, we will pause to examine the Anglo Saxon precepts more closely.

The Anglo-Saxons organized themselves into units identical to those of the Israelites.

Summary of the Institutes of the Anglo-Saxons

Sharon Turner summarizes the substance of the Anglo-Saxon law as it existed up to the time of the Norman Conquest in 1066. As we have noted, Thomas Jefferson saw that the laws of the Anglo-Saxons were beginning to erode after the eighth century; nevertheless, a great many of the best features survived and were still in operation right up until the Norman Conquest.

By that time, many years of war had compelled the Anglo-Saxons to confederate together under a king. He was still an elected monarch, however, rather than a hereditary king. Furthermore, he was closely controlled by the Witen (the Anglo-Saxon parliament).

But as with kings in all ages, the centralization of power was beginning to concentrate extensive authority by A.D. 1066. He was not only the chief executive of the nation but played an essential role in the legislature. He received and expended all taxation and was even the center and source of authority for all jurisprudence. He was commander in chief of all the armies, and when the Witen was summoned it was at his discretion. While it was in session, he presided over the proceedings.

The full name of the Anglo-Saxon parliament was the Witena-gemot, which is usually referred to by the shorter name of Witen. The membership included representatives from each of the towns, regions, or clans as well as those who had been honored by the king for valiant military service. It also included the Thanes (major landowners) and Milites or knights.

The highest orders of nobility, which were granted for distinguished military service, were not designed for an aristocracy but were open to the lowest classes. These titles included the title of Eolderman (Earl), Hold, Heretoch, Eorl, and Thegn or Thane. These titles were personal honors and were not passed on to the noblemen's successors.

Of course, land granted by the king for distinguished service was permanently retained by the recipient and could be transferred to his heirs. However, there was no feudal system of primogeniture which required that the nobleman's estate be assigned to an oldest son.

Any person holding land from the king was obligated to build castles and bridges and serve the king for a limited time in his military expeditions.

The Freemen

The foundation of the Anglo-Saxon society was the freemen. They looked upon the king as their sovereign and defender but were subject to no other master except those whom they chose to serve.

The highest order of freemen was the Milites or knights. A freeman became a member of this order by the "investment of the military belt." He then became part of a privileged class that lived on the lands of the nobility but could not serve in the national army as a commanding officer unless appointed as such.

Beginning of a Class of Bondsmen by 1066

During the latest states of Anglo-Saxon history, there had developed a substantial class of slaves, bondsmen, and others who were obligated to fulfill some degree of servility or compulsory employment. Nevertheless, the law protected them from abuse and provided certain regulations to promote their welfare and ultimate emancipation through good conduct.

Anglo-Saxons were freemen, organized in groups of ten, fifty, one hundred, and one thousand.

Property could not be taxed without the consent of the Witen.

All freemen were required to attach themselves to a tithing, which was a unit of administration originally consisting of ten families. Each member of a tithing had to put up a bond for his general good behavior and conduct himself according to certain regulations. Anglo-Saxon law required each group to be responsible for its members.

Reparation to the Victim

Originally a person found guilty of an offense was required to provide compensation only to the victim; however, the confederation under a permanent king resulted in additional fines going to the sovereign to cover the expense of "keeping the peace."

A value was placed on each individual according to his place in the social structure. This was called his "Were." An additional value was placed on each individual to protect his peace and security. This was called a "Mund." Offenders were fined proportionate to the amount of injury inflicted on a person's "life or limb" (his Were) or his peace and privacy (his Mund).

A high premium was placed on the personal liberty of each free subject so long as he was not violating any law. Heavy penalties were imposed on those who unlawfully imprisoned or restrained a freeman.

A person accused of a crime was permitted to defend himself by producing a certain number of his neighbors who were willing to swear that it was their complete conviction that he was innocent. This procedure was intended to impress on each person the necessity of maintaining a reputation of good character in his neighborhood so that in case of false accusation, his neighbors would come to his defense. Even today the use of "character witnesses" is a significant part of our judicial system.

The Jury System

The Anglo-Saxons also employed trial by jury, but there is no record of the time when it was first inaugurated. It may have been instituted anciently or introduced by the Danish colonists who are known to have employed the jury system from remote antiquity.

Under Anglo-Saxon law, accused criminals were given the right of trial by jury. Here twelve men are deciding the guilt or innocence of the accused.

Property rights were held to be sacred, and strict rules were employed concerning tenure and the transfer of titles.

Every man was required to honor the rights of others, just as he expected to have his own rights honored.

Judges were placed under obligation to carefully evaluate each offense and make the penalty commensurate with the seriousness of the crime.

All persons of means were emphatically enjoined to aid the poor, ameliorate the distress of widows and orphans, and treat strangers with kindness and fairness.

The Witen (or Parliament) was under obligation to make certain that the laws of the land conformed with the revealed laws of God. Any which did not were abolished and renounced as being unconstitutional and void. The Witen was also under obligation to see that every man, whether rich or poor, was fully protected in his common rights and treated with equal solicitude and care.

Social Justice and the General Welfare

It was a fundamental precept that all laws must be for the "general welfare" of the people, collectively and individually. Frequently the Witen passed laws favorable to the emancipation of slaves, even though this was often done contrary to the wishes of those who held them in a state of involuntary servitude.

A fundamental requirement of the law was that all persons who had been offended should have the opportunity to petition for redress. In fact, there were heavy penalties enacted against shiremen or judges who refused or neglected to hear the petitions of the aggrieved.

The victim of an offense was not to avenge his injury personally until after legal justice had been sought.

The natural liberty of each individual was only to be restricted by those laws which were for the social good of the whole people.

To protect the life and liberty of all freemen, there was an established catalogue of penalties for the loss of each limb or any other act of maiming or injury to an individual.

There were laws to prohibit fighting and personal violence, as well as laws to punish robbery and rapine, which the "powerful and war-like" members of society sometimes imposed on weaker or unsuspecting victims.

There were heavy penalties for trespass, whether against a person's house or his private lands.

Every land owner was required to make hedges and fences to keep his cattle from injuring his neighbor.

The observance of Sunday as a day of rest "from all worldly labor" was strictly enforced.

The law provided that there is a "natural equality of man" which must not be violated by those in power.

To protect the various levels of nobility and civic responsibility among the people, the punishment for offenses increased with the rank of the person offended. It was presupposed that the higher the rank, the greater the offense against the welfare of the people whom he served.

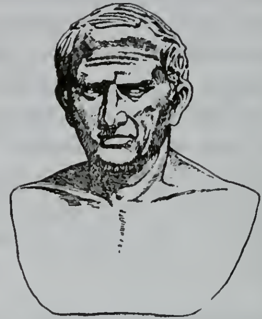
Channels of Justice

Each dimension and class of people had a procedure for the protection of their rights through designated channels, where redress could be sought. Each channel was kept distinct from interference by the others.

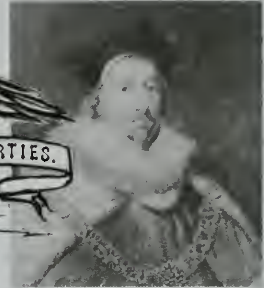
Not only was the property and life of the individual protected but his character

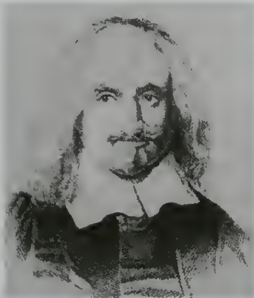
Plato

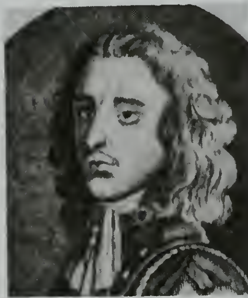
Aristotle

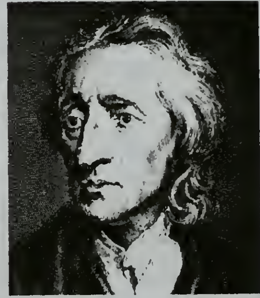

Cicero

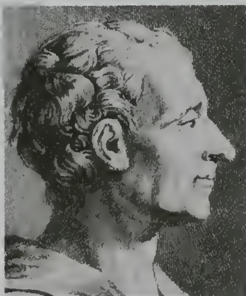
Hooker

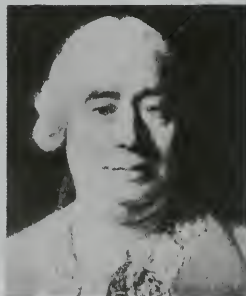

Coke


Hobbes


Sidney


Locke


Montesquieu


Hume

Blackstone

was as well. Any slanderous words were subject to punishment.

The rights of women received special protection under the law. Upon the death of a father, the mother received the custody and care of the children. Women were protected by law from violence and abuse or forced marriages.

Parents were held responsible for any offense committed by their children against others.

Any person convicted of perjury was thereafter disqualified as a witness.

Every man was protected in his right to hunt in his own woods or fields.[27]

To the Founders, these principles seemed far advanced in both spirit and context compared with those which prevailed in any country of their day, including England.

As we indicated earlier, when Jefferson reflected on these ancient principles he could not help asking the leader in the Virginia House of Delegates, "Is it not better now that we return at once into that happy system of our ancestors, the wisest and most perfect ever yet devised by the wit of man?"

Jefferson called the governmental system practiced by the Anglo-Saxons (and the Israelites) "the wisest and most perfect ever yet devised by the wit of man."

Classical Studies of the Founders

It will be apparent from what we have seen thus far that, collectively speaking, the minds of the Founders were like a huge vacuum cleaner, sucking up knowledge of every sort from every available source.

When it came to politics, the minds of the leading Founders were as far ranging and profound as any collection of advanced scholars in the field of political studies today. Their correspondence, speeches, and commentaries disclose a penetrating understanding of both ancient and modern writers.

Often the Founders read the classics in their original language. They were familiar with Plato's *Republic* and his *Laws;* with Aristotle's *Essays on Politics;* with the political philosophy of the Greek historian, Polybius; with the great Roman defender of republican principles, Cicero; with the legal commentaries of Sir Edward Coke; with the essays and philosophy of Francis Bacon; with the essays of Richard Hooker; with the dark forebodings of Thomas Hobbes' *Leviathan;* with the more optimistic and challenging *Essays on Civil Government,* by John Locke; with the animated *Spirit of the Laws,* by Baron Charles de Montesquieu of France; with the three-volume work of Algernon Sidney, who was beheaded by Charles II in 1683; with the writings of David Hume; with the legal commentaries of Sir William Blackstone; and with the economic defense of a free market economy by Adam Smith called *The Wealth of Nations.*

The Founders knew their classics. They also knew their history — Biblical, Greek, Roman, European, and American. From all of these valuable sources they sorted out what they considered to be the best and most enduring for the prosperity and peace of a free people under a republican system of self-government.

1. Paul Leicester Ford, ed., *The Writings of Thomas Jefferson*, 10 vols. (New York: G.P. Putnam's Sons, 1892–99), 5:3. Hereafter cited as Ford.

2. Elliot, 4:219.

3. Fitzpatrick, *The Writings of George Washington*, 26:489.

4. Merrill Jensen, ed., *The Documentary History of the Ratification of the Constitution*, 15 vols. by 1984 (Madison, Wis.: State Historical Society of Wisconsin, 1976–), 2:403–4.

5. Ibid.

6. Elliot, 3:98.

7. *Federalist Papers*, No. 26.

8. Ibid., No. 47.

9. Boyd, 1:492.

10. Charles Francis Adams, ed., *Letters of John Adams, Addressed to His Wife*, 2 vols. (Boston: Charles C. Little and James Brown, 1841), 1:152.

11. Exodus 18:13–19.

12. Deuteronomy 1:12–13.

13. Ibid., 1:15.

14. Exodus 18:26.

15. Deuteronomy 1:4.

16. Leviticus 25:10.

17. Jeremiah 34:17.

18. Albert Henry Smyth, ed., *The Writings of Benjamin Franklin*, 10 vols. (New York: Macmillan Co., 1905–7), 9:569.

19. John R. Howe, *The Changing Political Thought of John Adams* (Princeton, N.J.: Princeton University Press, 1966), p. 189.

20. William V. Wells, *The Life and Public Service of Samuel Adams*, 3 vols. (Boston: Little, Brown and Company, 1865), 1:22.

21. See 2 Samuel 2:4; 1 Chronicles 29:22; for the rejection of a leader, see 2 Chronicles 10:16.

22. Exodus 19:8.

23. Numbers 35:31.

24. Howard B. Rand, *Digest of the Divine Law* (Merrimac, Mass.: Destiny Publishers, 1943), pp. 130–31.

25. Boyd, 1:492.

26. See Colin Rhys Lovell, *English Constitutional and Legal History* (New York: Oxford University Press, 1962).

27. Abstracted from Sharon Turner, *The History of the Anglo-Saxons*, 5th ed. (London: Longman, Rees, Orme, Brown, Green, and Longman, 1836), pp. 221–25.

The "ancient principles," along with the works of the great classical writers, came together in Independence Hall when the Constitution was written in 1787.

ARTICLES

OF

Confederation

AND

Perpetual Union

BETWEEN THE

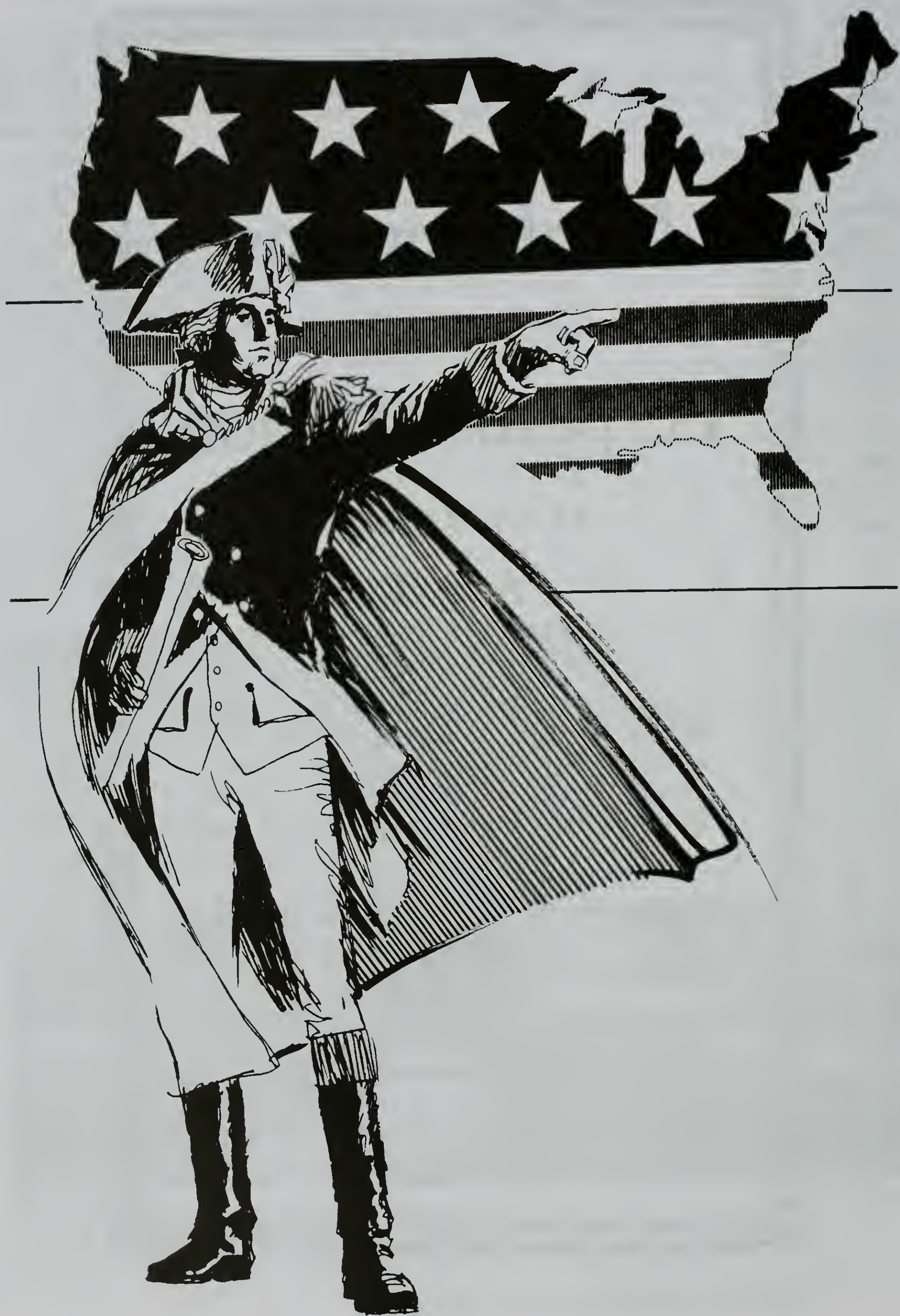
STATES

OF

NEW-HAMPSHIRE, MASSACHUSETTS-BAY, RHODE-ISLAND AND PROVIDENCE PLANTATIONS, CONNECTICUT, NEW-YORK, NEW-JERSEY, PENNSYLVANIA, DELAWARE, MARYLAND, VIRGINIA, NORTH-CAROLINA, SOUTH-CAROLINA AND GEORGIA.

LANCASTER:
PRINTED BY FRANCIS BAILEY.
M,DCC,LXXVII.

Title page of the Articles of Confederation, printed in 1777.

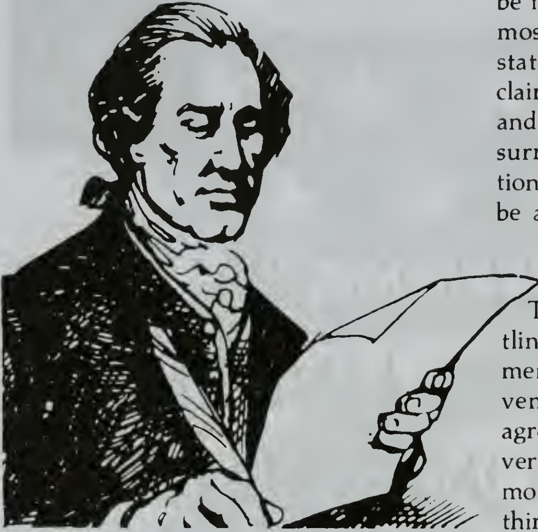


CHAPTER

THE REVOLUTIONARY WAR IS FOUGHT UNDER A WEAK CONSTITUTION

By the time the thirteen English colonies in America adopted their Declaration of Independence, they had already been meeting together as a confederation of states or as a congress of states for nearly two years. They had done this without any authority from England and without any formal constitution.

However, as the time drew near to establish themselves as a free and independent people, they decided to organize under some type of formal charter. On June 12, 1776 — one day after the appointment of the committee to write the Declaration of Independence — a committee of thirteen members of the Congress was appointed to draft a constitution. It was not to be a "people's constitution," but simply a compact among the states.



John Dickinson, who wrote the first draft of the Articles of Confederation.

The Dickinson Draft

John Dickinson was appointed chairman of the committee and wrote the first draft of the proposed "Articles of Confederation." This was significant because only a year earlier he had been strongly opposed to independence. In fact, he had written the famous Olive Branch Petition which Congress adopted on July 8, 1775, seeking some kind of conciliation with Parliament and the king. The king refused to read the petition because it came from "traitors and rebels." Dickinson was incensed. Although American born, he had received some of his training as a lawyer in England. After the king's abusive rejection of the American petition, Dickinson ceased to be a loyal Englishman and became a loyal American, committed to independence.

Dickinson's draft would have created a national government that would have been the standard by which the rights, powers, and duties of the states were to be measured. But this was too strong for most of the delegates. The heady wine of state sovereignty and their newly proclaimed independence was too delicious and too fresh in their experience to be surrendered so casually to another national government that might turn out to be as arrogant and abusive as the king.

The Congressional Draft

The Congress therefore began whittling away at Dickinson's draft. The members haggled and wrangled until November 15, 1777, when they finally agreed to accept a severely watered down version of Dickinson's draft. It was little more than a shallow compact among the thirteen sovereign states. It assured the states that they were to remain supreme, independent, and largely disunited. It emphasized "perpetual union" but merely coordinated them instead of consolidating their thirteen sovereignties into a genuine union. It was in this form that the Articles of Confederation were sent to the states for ratification.

However, the states took longer than the Congress to mull over the ramifications of a central government—even a weak one—and the last of the states (Maryland) did not adopt the Articles until March 1, 1781. Maryland held out until all of the states had given up their claims to the western territories and allowed these to be ceded to the "confederation."

But while all of this was going on, George Washington and a few thousand volunteers and enlisted recruits were desperately trying to fight the war of independence. The Congress operated under the Articles of Confederation all through the war, even though the Articles were not formally ratified until the war was nearly over.

Brief Outline of the Articles

Because we are engaged in a study of constitution writing, let us briefly outline precisely what manner of government the Articles of Confederation provided.

Article I

Name of the New Nation

The name of the new confederacy shall be "The United States of America."

Article II

Sovereignty of the States

Each state retains its sovereignty, freedom, and independence, and reserves to itself every power not expressly delegated to the United States Congress.

Article III

Confederation for Mutual Welfare

The several states enter into a firm league of friendship and bind themselves to assist each other for their common defense, the security of their liberties, and their mutual welfare.

Article IV

Interstate Rights and Responsibilities

To facilitate relations between the states, the free inhabitants of each state shall be entitled to all of the privileges and immunities enjoyed by citizens of the several states. They also shall enjoy freedom of travel and the privileges of trade and commerce. The property of the confederacy of the United States shall be immune to taxation or regulation by the states. Criminals fleeing from one state to another shall be subject to extradition and each of the states shall give full faith and credit to official acts of the other states.

Article V

Structure of Continental Congress

The legislature of each state shall have delegates selected annually to meet in Congress the first Monday in November each year. No state shall be represented by less than two or more than seven delegates. Each state shall finance the support of its delegates. Each state shall have one vote. Delegates shall enjoy freedom of speech and shall not be questioned outside of Congress for statements made therein. They shall not be subject to arrest while serving in Congress except for treason, felony, or breach of the peace.

Article VI

Limitations on States

No state without the consent of Congress shall enter into any treaty with a foreign power or another state. No state shall impose any duties in violation of a treaty. No state shall maintain a standing army or navy in peacetime except that which is required for its defense. Each state shall maintain and equip a disciplined militia. No state shall engage in war without the consent of Congress unless actually invaded; nor shall any state commission ships or issue letters of marque and reprisal until a declaration of war by Congress.

Article VII

Appointment of Militia Officers

When land forces are raised by any state, all officers from colonel on down shall be appointed by the state.

Article VIII

Meeting Cost of the War

The expenses of any war shall be paid for out of the treasury of the confederacy, which shall be funded by the states in proportion to the value of the land within each state.

Article IX
Powers of the Congress

The Congress shall have the following powers: to determine peace and war; receive ambassadors; negotiate treaties; set rules for captures and prizes on land and water; grant letters of marque and reprisal in peacetime; appoint special courts for trial of piracies and crimes on the high seas, and to determine final appeals on captures. It shall also settle disputes between states over boundaries and the private right of soil claimed under different grants. It shall fix the value of coin struck by their own authority or any of the states; fix the standard of weights and measures; regulate trade with Indians not members of any state; establish post offices; appoint all officers of the army and navy except regimental officers [who shall be appointed by the legislature of each state]; make rules for the regulation of the armed forces. The Congress shall have authority to appoint a Committee of the States to manage the affairs of the United States while Congress is recessed; to appoint other committees as needed; to appoint a presiding officer of the Congress; to appropriate funds for the payment of debts; to borrow money or emit bills on the credit of the United States; to make requisition on the states for military manpower and money proportionate to the number of white inhabitants.

The vote of nine states shall be required to declare war; grant letters of marque and reprisal in peacetime; enter into any treaties or alliances; coin money and regulate the value thereof; set up a budget; emit bills of credit, borrow money, appropriate money; determine the strength of the army or navy; or appoint a commander-in-chief of the army or navy.

A minority may vote to adjourn from day to day but a majority of seven of the states must approve any other action besides those enumerated in the above paragraph which requires nine.

Article X
Committee of the States

While Congress is in recess, the "Committee of the States" or any nine of the states shall be vested with powers to act on behalf of the Congress. However, none of the powers enumerated above which require the approval of nine states shall be delegated to the Committee.

Article XI
Invitation to Canada

Canada, on her own volition, may join the United States as an equal member, but no other colony shall be admitted without the consent of at least nine states.

Article XII
Past Debts to Be Honored

The new confederation pledges that it will honor all bills of credit, debts, and contracts entered into by the Congress before these Articles of Confederation become operative.

Article XIII
Amendments Require Unanimous Approval

No changes shall be made in these Articles without the unanimous approval of all of the states. The delegates further pledge on behalf of their respective states that these articles shall constitute a "perpetual union" [stated four times!] and each state pledges to uphold and support the decisions of the Congress.

What Was Not Provided

In peacetime the provisions of the Articles of Confederation may have held up fairly well for a considerable number of years. However, under the exigencies of the Revolutionary War, their weaknesses became glaringly apparent almost immediately.

First of all, they did not provide for any executive to speak with one voice for all of the states in time of emergency.

Second, they did not provide for a federal judiciary with general jurisdiction to handle federal cases other than those involving boundary disputes, piracies, and crimes on the high seas.

Third, they did not provide for any means of enforcing the decrees of Congress except by sending out an army to declare war on an offending state.

Fourth, they did not provide for any power to regulate interstate commerce. After the Revolutionary War this problem became the fuse which could have blown the United States to pieces.

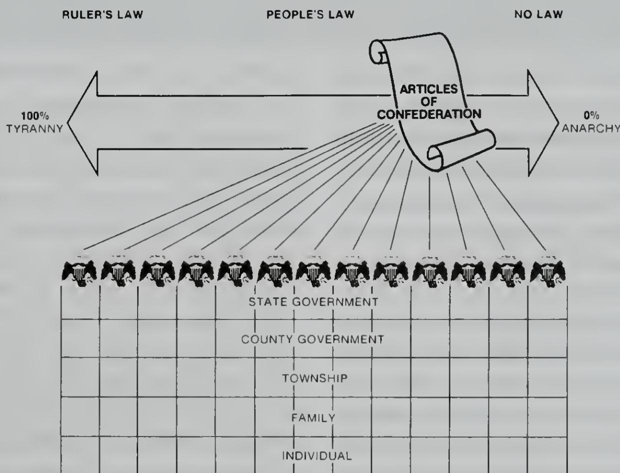
Fifth, they did not provide for any power to regulate foreign commerce except through treaties with foreign nations.

Worst of all, they did not provide for any power to tax. This left the Congress and its armed forces completely dependent upon the states to voluntarily meet their assessments (which they did not).

What the Congress was seeking was something they could accept as a tolerable working relationship among the states. What they ended up with was a philosophical form of republican principles which was too close to anarchy. On the political spectrum it would look something like the diagram below.

In spite of their deficiencies, however, the Articles were brilliant as far as they went. They actually contained some of the most essential elements that were later incorporated in the Constitution of 1787. Nevertheless, it was the lack of those six missing powers listed above which almost proved the undoing of the thirteen loosely federated American states.

The British leaders quickly perceived the weaknesses of the American political structure and recognized the well-nigh



The Articles of Confederation weighted the government of America on the side of anarchy rather than tyranny. It still was not in the balanced center.

hopeless task of mobilizing the resources of a people trying to operate as thirteen independent, sovereign states. In fact, from the Crown's point of view this blustering, ridiculous charade of so-called American independence seemed like nothing more than the arrogant impudence of a colonial tributary. King George and the Parliament were determined to pull the wayward Americans back into the British fold regardless of the cost in blood and treasure. Several times they almost succeeded.

Washington's Anguish in Trying to Survive Under These Articles

The war lasted eight long, weary years. The greatest frustration for the armies in the field was the stubborn reluctance of the prosperous states to fill their assessments of men, food, money, and arms which had been assigned to them by the Congress. And there was nothing the Congress could do about it but plead. The Articles gave them no enforcement power whatever. This left the men on the battlefield, who were doing the bleeding and the dying, too few in number, too exposed to the freezing cold, with too few guns to share, too little clothing, too few tents and blankets to cover them, too few rounds of ammunition for fighting, and often too many fronts on which to fight with such meager, miserable resources.

But the Revolutionary War demonstrated what strong men and women will do for the cause of liberty. They tenaciously pushed forward their fierce struggle in spite of the thousands of loyalists who deserted to the British side, and despite those Americans of low character who used the war as a feeble excuse for profiteering and wealth building. Under these circumstances it required a master's hand to keep the fragments of men and materials sufficiently coordinated to maintain at least the semblance of a fighting force. That tremendous task fell on the courageous tenacity and instinctive talents of a professional farmer from Virginia who had received practically all of his training merely as a militia officer on the Appalachian frontier.

George Washington

Washington was a member of the Congress at the time he was drafted to serve as the commander-in-chief of the Continental Army of the United States. The date was June 15, 1775. Following his appointment, Washington proceeded north and arrived in Cambridge on July 2.

The Congress had given him an "army," but he actually found himself in charge of a hearty, noisy band of unorganized farmers, sailors, merchants, mechanics, and roustabouts. This was typical of the tasks Congress would be handing Washington for the next eight years — monumental assignments with skimpy resources to achieve them.

Washington learned that this ragtag army had done some rather incredible things, but in a non-military and unprofessional way. Rude lines of fortifications had been put together around Boston, but they had been erected rather crudely and without competent army engineers to guide them. A few officers were looking after the commissary department, but there was no one in charge. There was no capable officer heading up recruitment or mustering. No one seemed to be in charge of the barracks or the hospital, and there was only a haphazard method of paying the soldiers. There was no official uniform, and the differences in costumes added to the spirit of jealousy and faction among the state militia.

Nevertheless, spirits seemed high when Washington first arrived. Some-

The war had already begun when George Washington assumed command of the troops at Cambridge, Massachusetts.

times too high. In the ranks were some 1,500 backwoodsmen from the wilderness country of western Virginia, Maryland, and Pennsylvania. They were rugged characters and, at this stage of the war, a nuisance to Washington.

Many of them were over six feet in height and born-to-the-woods frontier fighters. Many had marched or ridden hundreds of miles to join the siege at Boston. They came to fight, not to do guard duty. They resisted the boring routine of military discipline and practicing exercises in the martial arts. After all, Captain Daniel Morgan and his men had ridden 600 miles in 21 days because they thought Massachusetts had an emergency situation. All they found at Cambridge were several thousand rustics busily engaged in boring militia drills followed by long periods of idleness. This was largely due to the fact that the British commanders were not in the mood to fight after the loss of more than a thousand men at the Battle of Bunker Hill. In fact, General Gage had lost his commission because of it. For the time being the British command was willing to sit it out.

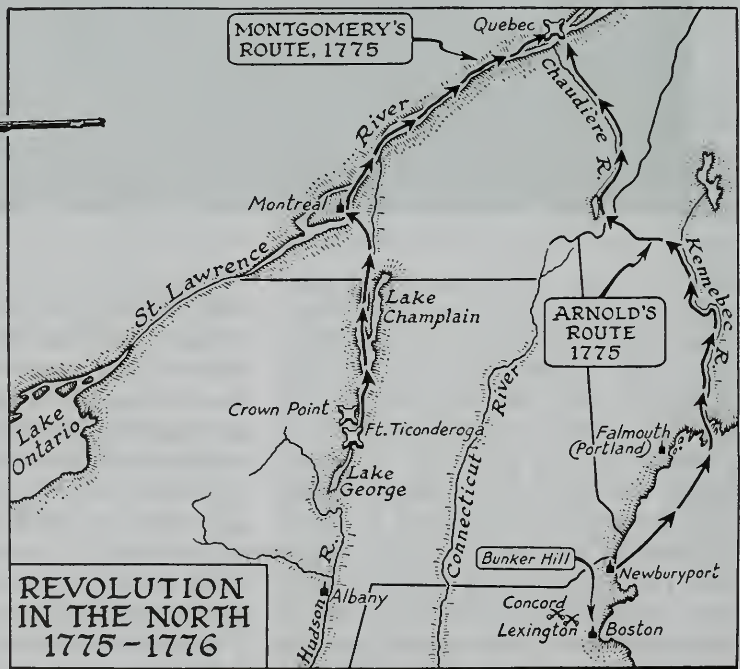
Meanwhile, these frontier fighters were anxious to show their prowess. They had brought along their Kentucky rifles with barrels five feet long. These were made by German and Swiss gunsmiths in Pennsylvania. While the Massachusetts musketmen with their Brown Bess muskets were lucky to hit a man at sixty yards, the noisy, hard-riding hooligans from the wilderness were able to carefully aim their Kentucky rifles and put ball after ball into a seven-inch target at a range of 250 yards. This would be phenomenal even for modern weapons.

The Expedition into Canada

While Washington was struggling to get the siege of Boston properly entrenched, orders came from Congress to invade Canada. The idea was to drive out the somewhat meager British forces so that the French Canadians could become the fourteenth state—perhaps several states later on. Congress appointed Major General Philip Schuyler as the leader, but he was such a bad choice that his subordinate, Brigadier General Richard Montgomery—a former British officer—had to take the initiative and move forward on his own. He captured Montreal without Schuyler on November 13, 1775.

Meanwhile, Congress had ordered Washington to send a second expedition up through Maine along the river route and capture Quebec. Benedict Arnold was agitating for something to do, so Washington gave him the command. He took a thousand volunteers, including Daniel Morgan and a goodly number of the frontiersmen with the Kentucky rifles.

Arnold and his men endured one of the most devastating treks of the entire war



In 1775, General Richard Montgomery captured Montreal from the British, while Benedict Arnold unsuccessfully attacked Quebec.

Benedict Arnold's trek to Quebec was one of the most devastating of the entire war—it included an endless, 180-mile march through icy water.

as they tried to reach the St. Lawrence River through Maine. After numerous setbacks they finally boarded their barges to descend the roaring rapids of the Chaudiere River, but many smashed on the rocks and a considerable number of men were drowned. Pushing forward along narrow defiles, the survivors waded for over 180 miles through icy water. What was supposed to take them 20 days required 45 days, and they were forced to travel twice the distance originally estimated by the guides.

En route, their food had given out. To survive, they had eaten broth made from boiling their moccasins and leather breeches. They even killed and ate their dogs. By the time this bedraggled band reached the St. Lawrence on November 15, 1775, there were only 600 left, and they were a scrubby, ragged bunch of scarecrows, most of them without shoes.

The delay in their arrival soon caught them in a deadly Canadian winter. Montgomery hurried up with 300 American reinforcements from Montreal, but the British forces had also been strengthened. The bitter cold, the outbreak of smallpox, and the general debilitation of the men because of food shortages, all combined to doom the American campaign against Quebec. The leaders made a heroic effort to carry out the mission Congress had given them, but it failed. Montgomery was killed and Arnold was wounded. Using the only option open to them, the Americans frantically retreated to Montreal. Within six months they had been driven out of Canada altogether.

Henry Knox led a mission across barren country to lay claim to the cannon at Fort Ticonderoga.

The Cannon from Fort Ticonderoga

With so much bad news pouring out of Canada, morale was low among the troops around Boston. Over 4,000 of them went home. Among the remaining regiments, many were sick, and, when enlistments were up, few signed on for another tour of duty. Congress was unable to enforce the assessments against the states for either men or money, so many quotas were largely unfulfilled. Congress wanted Boston liberated, but Washington found himself too weak to force its surrender. For this new commander it was a bleak winter, the first of many.

To partially remedy the situation, Washington sent big, 300-pound Henry Knox in midwinter weather to Lake Champlain where Ethan Allen and his Green Mountain Boys had burned down Fort Ticonderoga the previous May. Knox was

instructed to roust out as many patriotic farmers as possible from their warm hearths and dig the British cannon from the ashes of the fort. After that he was to haul the cannon down river until he reached western New York and then, by ox teams, cross the flatter terrain to Boston.

However, that is not the way it worked out. Knox recovered fifty-nine pieces of ordnance—some were 24-pound cannon and some stubby little mortars—but when he put the heavier cannon on barges, they sank to the bottom of the lake. Knox had them hauled up from the icy waters and put on sleds, which the oxen and horses pulled over trackless wastes of snow and ice across the ranges of the Taconics and then the Berkshires. Some of the animals died in their traces. Even Knox, himself, fastened a harness to his huge frame and helped pull some of the teams up and over the summits.

On January 18, the weary convoy struggled into the Boston siege camp, and Washington was jubilant. About the same time some new recruits started arriving from some of the other states. It began to look as though Washington would have an army by spring after all.

The Liberation of Boston

On the cold winter nights of March 2 and 3, Washington had the larger cannon mounted on Dorchester Heights southeast of Boston. At the same time he ordered a light bombardment of Boston from the west each night to distract the British and test their fire power. On the night of March 3, the American cannon boomed out their warning message most of the night.

By morning the British were able to see the cannon mounted on Dorchester Heights, and this created a high state of alarm among the British ranks. Every house in Boston and every British ship in the harbor, stood within range of those cannon. General William Howe sent out the order: "Evacuate Boston!" Had they not done so, Washington was prepared to reach the city by boats and lay siege. This was not necessary, however. After nearly two weeks of frantic loading, heaving, and hauling, the British embarked in approximately 170 vessels bound for Halifax, Canada. Over 1,000 terrified Tories insisted on boarding with the army, and this compelled General Howe to leave behind a treasure in munitions and supplies. Included were 250 cannon, which became

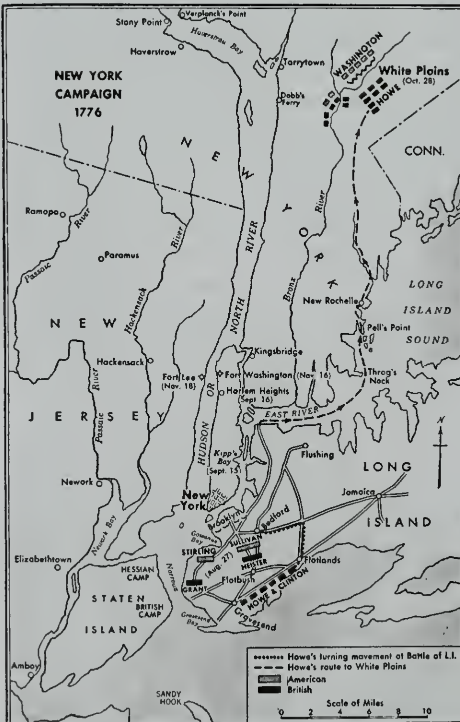
Before the British made a hasty evacuation of Boston, they dumped some of their cannon into the bay.

a great boon to the frugally equipped Americans.

On March 17 Washington entered Boston and went with his aides to church to express thanksgiving that the city was taken with scarcely any shedding of blood.

The Two-Pronged British Assault

Washington accurately anticipated that the next strike would be New York. Even during the siege of Boston, some preparations were made for the defense of lower Manhattan and Long Island. However, Washington knew that without the slightest semblance of a navy, he could put up merely a temporary defense. Eventually, he knew, the Americans would be driven out.



The war action in late 1776 centered in New York.

Meanwhile, during June of 1776, the British made a sweep down the Atlantic seaboard to attack Charleston, South Carolina, to establish a foothold in the South. They knew that in certain areas there were many recent immigrants who insisted on remaining loyalists and promised to help the British; but the assault failed. The fort on Sullivan Island constructed by Colonel William Moultrie took everything the British could throw into her. She blasted back with her 30 cannon that struck the British with deadly accuracy. It was two years before the British dared invade the South again.

Parliament thereupon hoped to end the war with its massive attack against New York. By August of 1776, General Howe had sailed back down from Halifax with the largest army ever assembled in North America. At the same time, his brother, Admiral Richard Howe, commanded the largest fleet that had ever been seen on the Atlantic Coast. Americans were outraged when they learned that Parliament had not only authorized an army of 55,000 men, but that 30,000 of them were to be hired mercenaries from Germany.

While Washington was hurriedly transferring his forces to the New York area, he was shocked to receive an order from Congress instructing him to send a large contingent of his meager forces back up into Canada. Washington vigorously protested this division of his troops at such a critical time. Eventually a commission was sent up to learn the actual conditions in Canada, and they found it was an impossible situation. Altogether, more than five thousand men had been lost by disease or battle casualties in Canada, and the remainder were finally ordered back south into the territory of the states. Greatly relieved, Washington turned back to the task at hand.

In September 1776 the courageous Nathan Hale was hanged for spying. His last words have inspired Americans ever since.

The Battle of New York

The ordeal in New York began when General Howe landed on Long Island on August 22, 1776, with approximately 32,000 superbly armed and equipped troops. On August 26 these professional regiments were hurled against Washington's 19,000 ragged, untrained Americans. After twenty-four hours of furious fighting Washington stealthily evacuated Long Island under cover of darkness and a dense fog. The next morning the British advanced on the American trenches, only to find them empty.

New York City (with a population of 22,000) was mainly a loyalist, Tory town, the second largest city in America after Philadelphia. As General Howe moved onto Manhattan Island, with Washington in upper Manhattan, huge crowds welcomed the British Redcoats as liberators. Meanwhile, up around 34th Street (Kip's Bay then), the Americans encountered the first Hessian and British regiments. Washington could scarcely believe his eyes when he saw his raw, newly recruited American soldiers fleeing like a flock of chickens. Washington threw his hat on the ground in a rage and cried out, "Are these the men with whom I am supposed to defend America?"[1]

However, in Harlem the Americans entrenched themselves and won a two-hour bullet-for-bullet exchange which revived their spirits and restored their self-respect.

On September 21, 1776, an amazing thing happened. The city of New York went up in flames. Nobody ever discovered the cause. The flames devoured hovels and mansions, churches and businesses, from street to street, until they had gutted the city. Tory loyalists blamed their "rebel" neighbors. At the height of the debacle "mob frenzy had overcome the Tories. They seized suspects and strung them up without trial. Some were even thrown screaming into the flames."[2]

Nathan Hale

The next day an angry General Howe confronted a young, well-educated American who had been captured on Long Island during the night of the fire. His

name was Nathan Hale. With a dignified composure he openly admitted that he was observing British troop movements for General Washington. The angry British general ordered him hanged without a trial. Hale asked for a clergyman. His request was denied. He asked for a Bible. That also was refused. Just east of modern First Avenue, on 52nd Street, a gallows was hastily erected. With the noose around his neck, young Hale was asked if he had anything to say. Without quavering or exhibiting any sign that he feared his fate, young Hale said fourteen words which school children have recited ever since, "I only regret that I have but one life to lose for my country."

Washington Retreats

For one month General Howe dawdled in lower Manhattan, but on October 9, 1776, the British forces moved out. British warships sailed up the Hudson between Fort Lee on the New Jersey bank and Fort Washington on the Manhattan bank. Howe took his army and sailed up the East River to outflank the Americans on the other side. Washington quickly moved his main force clear up to White Plains in order to escape this British envelopment. Nevertheless, there was a fierce battle on October 28 in which the Americans gave a good account of themselves even though they were greatly outnumbered. When Washington saw that another encounter might prove fatal, he moved his forces across the Croton river to North Castle. By this time the Americans were in full retreat.

Instead of ending the war then and there, which Howe might have done with an all-out assault, the British general moved back to Manhattan to attack the defending forces at Fort Washington and Fort Lee on either side of the Hudson. After ferocious fighting, both forts fell. Washington raced back down the New Jersey side hoping he could save Fort Lee, but he lacked the strength. He therefore marched southward across New Jersey with the few troops who had not deserted him. He sent word to General Charles Lee, his second in command (who had the rest of the army at North Castle), to follow him, but Lee did not budge. As Washington led his scarecrow army across New Jersey, he soon found the British right on his heels. It was a perilous retreat and desertions were rampant as the word spread that the war was lost. At every stop Washington sent a dispatch pleading with Lee to come quickly before disaster overtook his weakened regiments. Lee hung back almost as though he wanted Washington to be captured so he could be commander in chief. All along the route, Tories broke out the Union Jack as soon as Washington had marched past. Nevertheless, Washington did finally reach Trenton, and he did so in time to gather up every boat on the Delaware River so that after he crossed the British could not follow him. Once he encamped on the Pennsylvania side, however, he could see that unless Lee came quickly, the end was near. There was no longer much with which to fight. He was further alarmed to learn that Congress had not only failed to provide him with stores and recruits, but the distinguished gentlemen had pulled up stakes and fled from Philadelphia to Baltimore in fear for their lives.

On December 2, Charles Lee finally began his march toward the Delaware, but he seemed in no hurry. By December 13 he was still two days away from crossing over into Pennsylvania. That night, after the camp was set up for the soldiers, Lee found more comfortable quarters at an inn four miles away. Early the following morning, Colonel William Harcourt and his British cavalry surrounded the inn and Lee was captured. (Harcourt was made a one-star general for snaring this

fine prize.) As soon as Lee's subordinate officers heard of his capture, they rushed the American army onward to join Washington. The shocked commander could scarcely believe Lee's stupidity in leaving his troops simply for the comfort of a bed.

Trenton, First Turning Point of the War

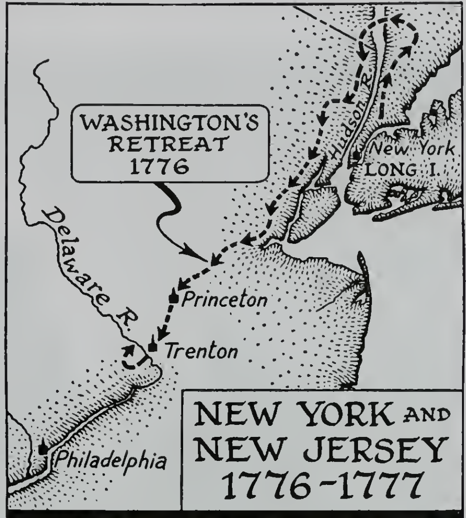
With December drawing to a close, Washington found he had not only been deserted by Congress, but 6,000 of his soldiers were anxious to leave for home in two weeks when their enlistments ran out. Meanwhile, General Howe, who had chased Washington across New Jersey, had so little regard for what was left of the ragtag American army that he retired to New York to enjoy his new honor of being knighted for capturing New York. He left Lord Cornwallis at Princeton and assigned approximately 1,200 Hessians to guard Trenton. Howe felt any new action could wait until spring.

But Washington could not wait for even two weeks. His troops were not only demoralized, hungry, and ill-equipped, but most of them would soon be leaving.

On December 23 Washington formed his bedraggled Americans into ranks and had them listen to a stirring message written by Thomas Paine. It included the famous words which have been recited by Americans from that day to this:

"These are the times that try men's souls. The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of their country; but he that stands it now, deserves the love and thanks of man and woman."

It usually takes more than mere words to arouse and inspire beaten soldiers, but these lines of Thomas Paine somehow had their impact on Washington's shiver-



Following a series of disastrous defeats in New York, Washington fled across New Jersey, where he won his stunning victories at Trenton and Princeton.

ing, hungry, threadbare patriots. A sense of renewed commitment and sacred mission returned to their souls. Two nights later they crossed the Delaware. The weather was so cold two of them froze to death. Nevertheless, they caught the British mercenaries completely off guard in a groggy hangover the morning after Christmas day. In a brilliant flourish of organized fury, Washington captured the whole British contingent of a thousand Hessians without a single American being killed. Two were wounded, including James Monroe, who later became President of the United States.

Howe's wrath knew no bounds when he heard what had happened. He ordered Cornwallis at Princeton to make the quick, ten-mile march to Trenton and destroy Washington. It was miserable weather, but Cornwallis moved south with 5,500 Redcoats. He arrived at night with his men tired and cold from the long march. Cornwallis rejoiced when he saw the American campfires burning near the

Washington crosses the Delaware River en route to the American victory at Trenton, New Jersey. (Painting by Emanuel Leutze.)

river because this meant Washington was in a trap with his back to the water. Therefore, he decided to let his men have a good night's rest and attack the next morning. However, by morning there was no Washington nor any American army along the banks of the Delaware. Cornwallis found nothing but campfire ashes. During the night Washington had maneuvered around Cornwallis and marched his men all night to attack Princeton, which Cornwallis had just left!

Nevertheless, there was some furious fighting at Princeton. Cornwallis had left behind a rear guard of 1,200 men, but Washington finally occupied the town. At that point Washington encountered a frustrating situation. He was only a few miles from New Brunswick, which was the field headquarters for the British. A few hundred men could have captured it. However, Washington's troops had gone all night without sleep. They had marched a dozen miles and had fought all morning.

As Washington later wrote to the runaway Congress: "Six or seven hundred fresh troops upon a forced march, would have destroyed all their stores and maga-

zines [at New Brunswick], taken ... their military chest [a fortune in gold] ... and put an end to the war."[3]

Tragically, the Congress had failed to provide any reserve forces and so the American commander had no option but to march his weary but magnificent fighters up to Morristown where they would wait out the winter or go home if they chose not to reenlist.

So 1776 came to a close, and what a year it had been. The Americans had lost Canada, but Washington had liberated Boston. After that, he lost New York and he also lost Congress, at least temporarily. But he saved the war at Trenton and Princeton.

British Atrocities Arouse American Wrath in New Jersey

The people of New Jersey never forgot the brutality of the British occupation during the winter of 1776–77.

"Stung by the upstart Yankees, claiming the miserable eighteenth-century soldiers' privilege of pillage and plunder, the British and Hessian regulars burned and looted and raped the winter away. In Princeton they maliciously burned all the firewood available to inhabitants whose homes and orchards had also been burned; slaughtered and carried off cattle and destroyed mills."[4]

Lord Francis Rawdon, based on Staten Island, said he favored the ravaging of New Jersey to teach the "wretches" a lesson. He also considered the ravishing of American girls and women highly entertaining. He wrote:

"The fair nymphs of this isle were in wonderful tribulation, as the fresh meat our men have got here has made them riotous as satyrs. A girl cannot step into the bushes to pluck a rose without running the most imminent risk of being ravished, and they are so little accustomed to these vigorous methods that they don't bear them with the proper resignation, and of consequence we have most entertaining court-martials every day."[5]

When it came to plunder, the Hessians were the experts. They regarded it as the legitimate right of soldiers to make their fortunes with plunder. They said it made up for their low pay. Whenever they passed through a town or rural area, anything movable was carefully piled on wagons and carried away. Tories had writs of immunity issued by General Howe, but the Hessians could not read English. To them, looting was all the same, friend or foe regardless.

The Campaign to Isolate New England in 1777

Washington had only intended to stay in Morristown, New Jersey, for a few days, but he was forced to remain there five months. Smallpox and starvation ravaged his camps. The numerical strength of 5,300 men which comprised his army at Trenton was reduced to 3,000 at Morristown. Gradually, however, the victory at Trenton produced a steady flow of new recruits until the army under Washington was built back up to approximately 9,000 men. Washington also received 22,000 muskets through the French. During this period Franklin was in Paris, where he continually urged the French to join the freedom fight and help the Americans.

However, just as circumstances seemed to be improving, Washington received some bad news from the north. The report declared that a well-known British general, John Burgoyne, was coming down out of Canada with 8,000 well-equipped soldiers to occupy Lake Champlain and the Hudson River valley. The

British General "Gentleman Johnny" Burgoyne

plan was to completely cut off New England from the rest of the states. The War Office in London had expected Burgoyne to follow the Lake Champlain-Hudson River chain down to Albany, New York, while General Howe would go up the Hudson to meet him. Colonel Barry St. Leger was to take the Montreal route to Ft. Oswego on Lake Ontario and then travel east along the Mohawk Valley to Albany. It was the old strategy: divide and conquer.

The northern army of the American forces was under the command of General Horatio Gates, an ex-British officer who was wounded during Braddock's expedition and later became an American plantation owner. He was definitely on the side of the new United States but had unmitigated contempt for Washington, whom he continually compared to himself in a demeaning manner. In fact, he had been secretly trying to convince Congress that he should replace Washington. Furthermore, he had weakened the northern armed forces by quarreling bitterly with his second in command, the dignified and aristocratic General Philip Schuyler.

The Fall of Fort Ticonderoga

As Burgoyne came down out of Canada, his first target was Fort Ticonderoga on Lake Champlain. American General Arthur St. Clair had built up a strong defense of Ticonderoga, but General Gates stubbornly refused to let him put cannon on Sugarloaf Hill overlooking the fort, claiming the hill was too steep to be accessible. Benedict Arnold climbed it with his game leg (wounded at Quebec) just to prove Gates was wrong. Gates said his order would stand. As a result, the British used ropes to haul cannon to the top of Sugarloaf Hill and the next thing the Americans knew, they were forced to make a speedy evacuation before they were all captured.

Burgoyne was jubilant with this early success at Ticonderoga. He then proceeded south until he could go overland to the west for a few miles and reach the headwaters of the Hudson. At that point he had reason to regret bringing along 138 heavy artillery pieces and 600 wagons for baggage, much of which was to provide luxurious, non-military items so the general and his mistress might enjoy living in the style to which they were accustomed.

To hinder Burgoyne, General Schuyler and the American militia set about chopping down trees, flooding roads, throwing up barricades, and building nuisance traps. Local farmers burned their fields, drove away their cattle, and left nothing but a scorched earth for the invaders.

Fort Ticonderoga

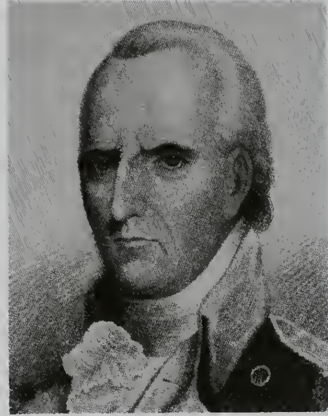
Burgoyne spent three terrible weeks traveling 23 miles and seven of those miles were over uncontested waters.

Having reached Fort Edward, which the patriots had abandoned, Burgoyne rested while his 400 Indian allies went prowling around the country. One small band captured an American girl, Jane McCrea, who was the fiancée of an American loyalist serving with Burgoyne. The girl was killed and scalped. Nothing could have happened to more violently inflame the American patriots than this. They flocked to their militia posts, volunteering to fight.

The Battle at Bennington

They chose as their leader General John Stark, hero of Bunker Hill, who had later resigned from Washington's coterie of officers because he felt the Congress had ignored him in making appointments. But he agreed to lead the New Hampshire volunteers against Burgoyne so long as it was a state venture. He marched his 1,500 patriot volunteers to Bennington (now in Vermont), and asked the Green Mountain Boys to join him there. Stark was scolded by Congress and also by General Schuyler for not joining up with the regular forces, but Stark ignored them both. His instinct told him that Burgoyne would be forced to come to the Bennington area looking for horses to ride and cattle to eat. He felt certain Burgoyne would know that Bennington was the supply center for the American military forces and a convenient place for his raiders to stock up. This is precisely what happened.

On August 15, 1777, Stark encountered 374 Germans on a foraging expedition. They had been ordered to get 1,500 horses and food of all kinds, including cattle for meat. In the ensuing battle only



General John Stark

nine of the 374 Germans escaped death or capture. Another of Burgoyne's contingent arrived on the heels of the first, and suffered similar consequences with 230 dead, wounded, or captured. Stark lost only 30 killed and 40 wounded in both encounters.

The Battle of Freemen's Farm

After the disaster at Bennington, Burgoyne was anxious to press southward along the Hudson Valley. He was so hard pressed for supplies that he hoped to hear that General Howe would soon be arriving with logistical support from the south, or that Colonel St. Leger would soon arrive, bringing supplies and fresh reserves from the west.

Finally a letter did arrive from Howe, but it contained alarming news. Howe was not coming. He had decided to launch a campaign against Philadelphia!

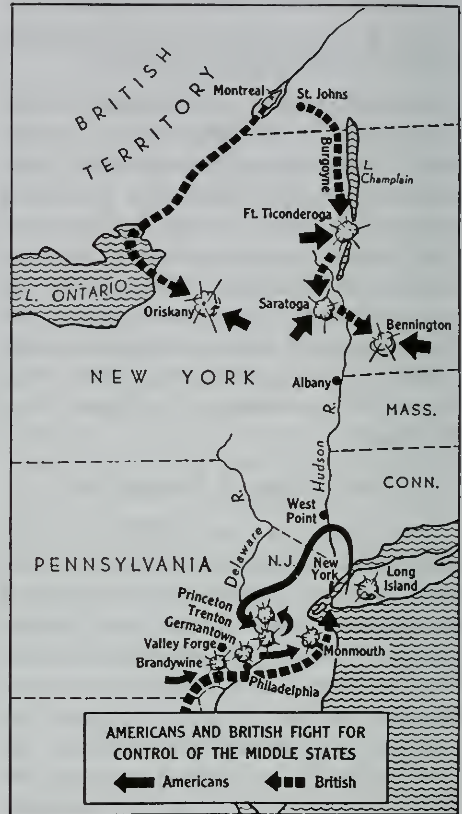
Burgoyne soon learned with further alarm that St. Leger also would not be coming. According to the report, St. Leger had proceeded from Fort Oswego (on the shores of Lake Ontario) and had besieged the only American stronghold between himself and the Mohawk River (Fort Stanwix). However, Benedict Arnold, who had finally been commissioned

a major general, had tricked St. Leger into believing that Arnold was coming with a massive army to destroy him. St. Leger's Indians panicked and fled in terror, taking most of his supplies with them. St. Leger therefore returned to Oswego himself and missed the opportunity of confronting Arnold's imaginary host.

In desperation, Burgoyne finally decided to go it alone. He crossed the Hudson River on September 13, 1777, and began pushing south. His advance was halted at Bemis Heights, where the Battle of Freemen's Farm took place on September 19. Technically, Burgoyne won the disputed territory by gaining final possession, but he lost nearly 600 men whereas the Americans lost only about 300.

Two historical observations grew out of this encounter. First of all, there was the amazing capacity of Daniel Morgan's frontiersmen to climb high trees with their Kentucky rifles and pick off British officers or artillerymen. The second observation was the fact that during several critical situations the tactical recommendations of Benedict Arnold would have carried the day had not General Horatio Gates foolishly countermanded them. Arnold had an instinct for battle. Gates only knew the rules of the book. Arnold's flexibility and daring seemed to have frightened Gates.

The stern old ex-British officer relieved Arnold of his command and wrote his report on the Battle of Freemen's Farm without any reference to Arnold's suggested strategies, which would have changed the outcome. Arnold was so outraged with Gates's bad judgment and unfair tactics that he planned to leave and report directly to Washington, but friends induced him to stay.



Much of the early war centered in the northern and middle states.

It was well that he did. Burgoyne suddenly determined to make a desperate last try at breaking through and joining the British forces, which he heard were finally coming up the Hudson. The Battle of Bemis Heights was the result.

The Battle of Bemis Heights

Gates had decided on a strategy of merely holding Burgoyne in place when the circumstances called for an attack and forced surrender. Every American in the field seemed to realize this except Gates. Finally Arnold could stand it no longer. He suddenly appeared on the field riding a big brown horse, and a roar of cheers went up from the Americans as Arnold

led a charge directly into the center of the British line. Morgan's men immediately took to the high trees, and British officers began to fall. Arnold commandeered regiments of other American officers who looked on in amazement as Arnold drove all before him.

At the height of his triumph, Arnold commandeered two regiments and stormed a redoubt held by Colonel Heinrich von Breymann. The redoubt fell and so did Arnold, shot in the same leg that had been smashed by a bullet at Quebec. Ironically, as Arnold lay on a litter he was handed an order from Horatio Gates commanding him to return to quarters before he did something rash. As they carried Arnold to his quarters he gloried at the sight of Burgoyne's forces retreating in defeat.

Surrender at Saratoga

As before, Gates wrote his report as though he had been the great strategist who had forced Burgoyne to retreat, but every American, British, and German knew who had given the Americans the victory. In this battle Burgoyne had lost 600 men, the Americans only 150. Leaving 500 sick and wounded behind, Burgoyne withdrew to Saratoga. Shortly thereafter Gates surrounded him, and Burgoyne was compelled to surrender. The date was October 17, 1777.

Nothing could have shocked Europe or exhilarated Americans more than the unbelievably good news that Burgoyne had gone down to defeat and some 5,000 British and German prisoners had fallen into American hands.

---

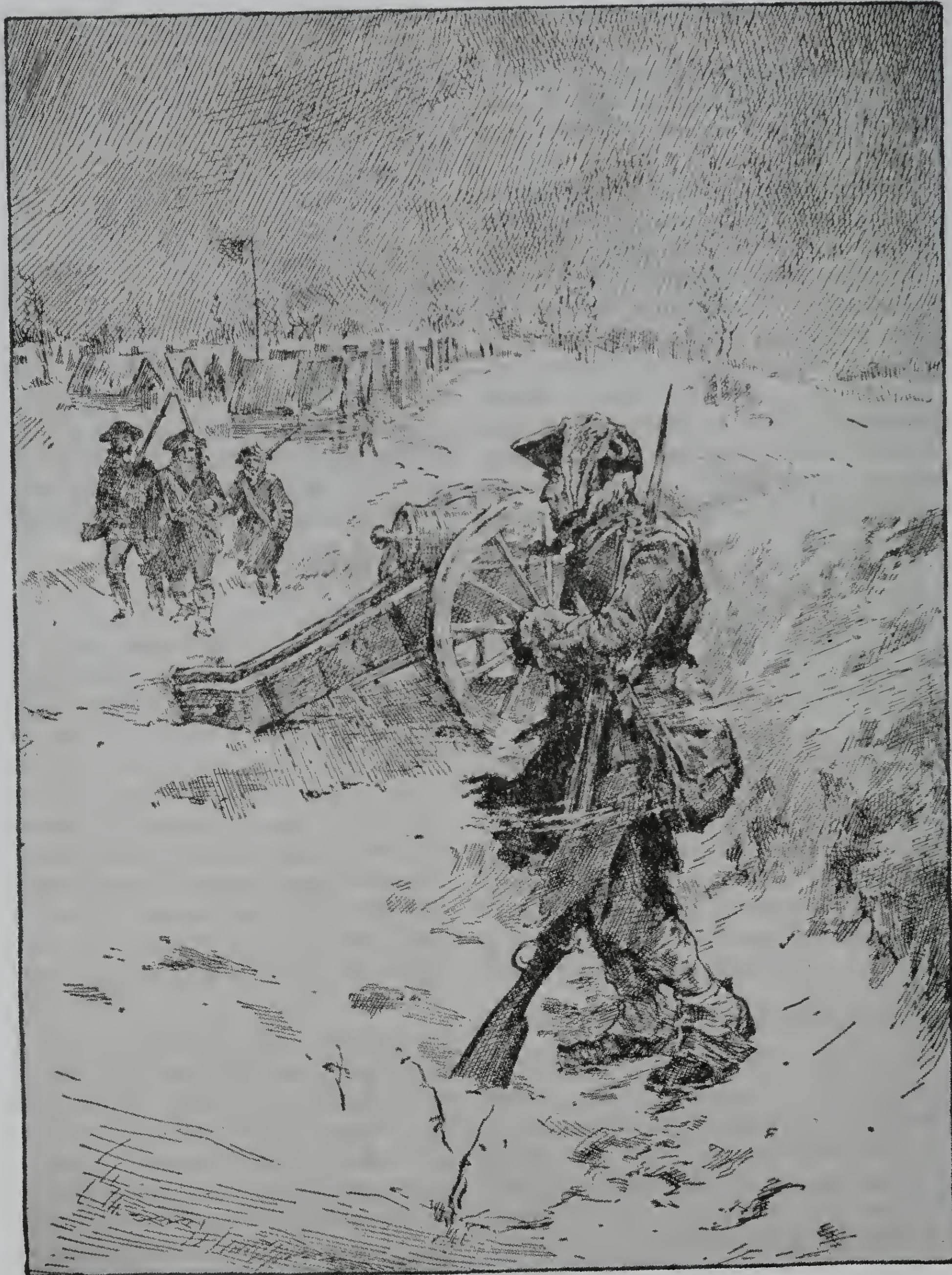
1. Christopher Ward, *The War of the Revolution*, 2 vols. (New York: Macmillan, 1953), 1:232.

2. Robert Leckie, *The Wars of America* (New York: Harper and Row, 1968, 1981), p. 149.

3. Ward, *The War of the Revolution*, 1:317.

4. Leckie, *The Wars of America*, p. 162.

5. John C. Miller, *Triumph of Freedom, 1775–83* (Boston: Little, Brown and Company, 1948), pp. 165–66.



CHAPTER

GENERAL WASHINGTON'S WORST ORDEAL

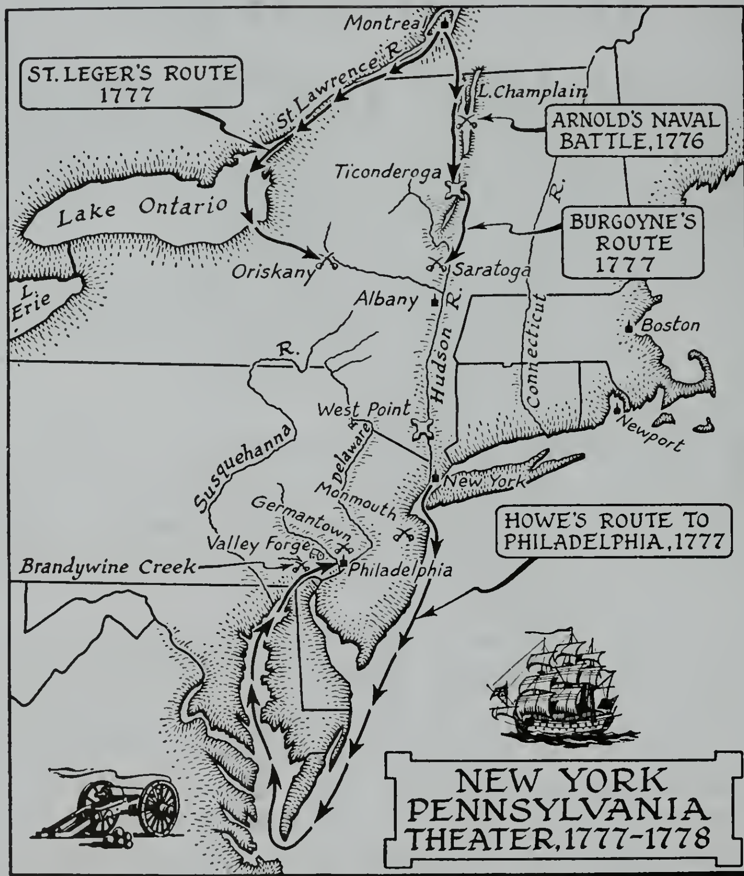
Three weeks before Burgoyne surrendered at Saratoga, Sir William Howe, the one man who could have saved Burgoyne, entered triumphantly into Philadelphia, the erstwhile capital of the infant United States. From its beginning, this expedition of General Howe's had been a strange affair.

On July 23, 1777, Howe, instead of sailing up the Hudson River to help Burgoyne, had initially sailed for the mouth of the Delaware River with 260 ships and about 15,000 fully equipped soldiers. However, when he was told that the Delaware might be too difficult to navigate safely he proceeded farther south and came up through the Chesapeake Bay instead. Howe began landing his troops at Head of Elk, Maryland, on August 14. At this point he was only fifty miles south of Philadelphia.

Brandywine

Although substantially outnumbered, Washington set out to head off the British invasion. The two forces collided at Brandywine Creek on September 11, but the battle did not go well for the Americans. Bad intelligence information and the task of maneuvering troops on a battlefield which stretched over several miles left the Americans confused and disorganized. By nightfall they were making a forced retreat northward.

Without further hindrance, Howe entered Philadelphia on September 26, 1777. There he found enough Tories to suddenly surface and give the British army a liberator's welcome. Howe felt so confident of his position in Philadelphia that he sent back to New York for his mistress and her husband (Mr. and Mrs. Loring), and settled down for a season of rest and recreation. He even divided his forces, with some in Philadelphia and the remainder encamped in the unguarded suburb of Germantown.



In 1777 Britain's Burgoyne surrendered at Saratoga, while Howe occupied Philadelphia. Washington lost two major battles at Brandywine and Germantown.

During the battle at Germantown, some British soldiers barricaded themselves in an old mansion and fought off all comers.

Germantown

Washington saw the camps at Germantown as a perfect opportunity to attack.

The American ranks had been reinforced so that Washington now had about 9,000 regulars and 3,000 militia. This gave the Americans a substantial numerical edge over Howe's 9,000 at Germantown. On the night of October 3, 1777, Washington struck. Unfortunately, his troops had been compelled to march 16 miles in order to reach their target, but they were tough. The initial attack pushed the British back and a potential victory was at Washington's fingertips. However, a major segment of the American army became lost and arrived an hour late. Another became enveloped in a fog. Finally, a charge by the British sent the Americans reeling back in unorganized confusion and shortly afterwards the retreat became a rout.

With more experienced officers and a better reconnaissance of the terrain, Washington might have pulled it off and ended the war. However, as it turned out, Washington was compelled to accept defeat after his fifth battle with Howe. But he hadn't lost the war. With a countenance more determined than ever, Washington led the dejected remnants of his army off to the hills of Valley Forge, lying twenty miles west.

Valley Forge

The tragedy at Valley Forge was political rather than climatic. The weather was freezing but moderate compared to some winters. The real problem was that there was no power in the Congress to compel the states to fulfill their assessments. As a result, men froze and starved because of a weak government and selfish avarice by many Americans not directly involved in the actual fury of the war. As one historian writes:

"Soldiers at Valley Forge went hungry because nearby farmers preferred to sell to the British in Philadelphia for hard cash, because New York's grain surplus was diverted to New England civilians and the British in New York City, and because Connecticut farmers refused to sell beef cattle at ceiling prices imposed by the state. Soldiers went half-naked because merchants in Boston would not move government clothing off their shelves at anything less than profits ranging from 1,000 to 1,800 percent. Everywhere in America there was a spirit of profiteering and a habit of graft that made Washington grind his teeth in helpless fury. In response to his appeals, Congress passed the buck by authorizing him to commandeer supplies. This he was reluctant to do among a people supposed to be trying to throw off the yoke of a tyrant. When he was forced to do it, the results confirmed his fears."[1]

Each year thousands of modern Americans visit the site of the suffering of Washington's beleaguered soldiers during that miserable, deadly winter of 1777–78.

Men went hungry and half naked at Valley Forge because Congress was powerless to force the states to send supplies.

The bitter winter of Valley Forge brought one small comfort: Baron von Steuben appeared and began to train the men to be true soldiers.

Many men suffered to the point where they could not endure it. They joined the British just to get food. About 3,000 deserted and went home. Around 2,000 froze to death or died of starvation and disease. Some 200 officers resigned their commissions. The inhumanity of it all is portrayed in the following summary:

"And so every night for too many weeks sticklike soldiers stuck their heads out of their smoky huts to cry, 'No meat! No meat!' Firecake and water was their food, bloody footprints in the snow their sign. Their clothes were so ragged and blankets were so scarce that they often sat up all night rather than fall asleep and freeze to death. Although they had little sustenance themselves, body lice managed to feed on them. Lafayette was horrified to see soldiers whose legs had frozen black and who had to be carted off to hospitals that were little better than death terminals to have their limbs amputated. One bitter Continental wrote: 'Poor food — hard lodging — Cold Weather — fatigue — Nasty Cloaths — nasty Cookery — Vomit half my time — smoak'd out of my senses — the Devil's in it — I can't Endure it — Why are we sent here to starve and freeze ... ?'"[2]

There were only two bright spots in the whole miserable winter at Valley Forge. One was the news that the French had signed up as allies and would be sending over ships and soldiers. The other was the arrival of Lieutenant General Baron von Steuben, former aide to the king of Prussia.

Von Steuben was horrified with conditions at Valley Forge. He said no European army would have endured it. He set about whipping the freezing, starving scarecrows into a respectable army. He cursed, cajoled, and joked the despairing Americans into a more positive outlook as he drilled them day after day. In due time it was discovered that he was not really a "baron;" but the French minister of war had recognized his abilities and endowed him with this counterfeit nobility in order

to make him more quickly acceptable to Americans. However, by the time the facts became known, people could not have cared less, especially the troops at Valley Forge. The jolly Prussian potentate had become a military institution, and the men obeyed his commands out of admiration and respect rather than fear.

Spring came at last and by the time the snow was melting off the hills, Washington had put together an army that could march and maneuver in spite of the Congress, the desertions, the deaths, and the terrible suffering at Valley Forge. Midwinter it looked as though there might not be any American army left to join the French when they arrived, but by April Washington knew the crisis had passed and he still had a chance.

He was also cheered by the exchange of prisoners which allowed the captured general, Charles Lee, to return to his position as second in command. What Washington did not know (and the private papers of General Howe did not disclose for half a century) was the fact that Lee had spent his time in captivity plotting with Howe on ways and means of betraying Washington into British hands.

The British Abandon Philadelphia

A shock wave went up and down the American states in May of 1778 when it was learned that both General William Howe and Admiral Richard Howe were resigning their commands in America (although the admiral would not leave until September). Sir Henry Clinton, who took over the British command, promptly ordered the evacuation of Philadelphia. A large French fleet was on the way to America, and Clinton wanted the British forces concentrated in New York by the time the French arrived. The terrified Tories in Philadelphia suddenly saw the pomp and pageantry of a brilliant winter turning to ashes in the spring. Howe brushed off their complaints with the casual suggestion that they must somehow make peace with the patriots whom they had so snobbishly mistreated during the British occupation.

So the British packed off with gear, guns, and baggage, for New York.

But this was more than Washington could endure. Militarily speaking, here was the core of the British forces stretched out along the road for a dozen miles, virtually asking for an attack. Washington ordered his half-healed army out of quarters and led his troops across New Jersey in hot pursuit.

The Battle of Monmouth

When Washington caught up with the rear vanguard of the British near Monmouth, he held a council of war. To his amazement General Charles Lee argued vehemently against attacking the British. Washington overruled him but tried to placate Lee's feelings by offering him the command of the advanced corps that would strike Clinton first. Lee refused the assignment until he saw that the honor would go to young Lafayette and that he would have a command of 5,000 men. Upon learning this, Lee told Washington he had changed his mind. Nevertheless, Lee's attack was an unorganized disaster.

As Washington came up along the road with the main body of the American army, he suddenly ran into waves of fleeing American soldiers in full retreat.

Washington's blood pressure rose with his wrath. Washington ordered Lee to the rear and then set about to stop the retreat. He was the only one who could

After General Charles Lee began to retreat at Monmouth, Washington galloped up and forced the British into a retreat of their own.

have done it. Washington had a magnificent presence among his troops and supreme calmness under fire. He galloped down the road toward Monmouth and halted two retreating regiments, reformed them, and ordered them to hold back the attacking British until he could regroup the forces to the rear. Now Washington was able to see the fruits of von Steuben's winter work in action. He saw his American regiments wheeling into line under fire and forcing the British back.

This battle could have been a great victory, but, tragically, Lee's initial mistakes in both strategy and execution destroyed the cutting edge of the attack so the element of surprise was lost and the darkness found both armies exhausted and the outcome undecided. Sir Henry Clinton and his British officers only waited until midnight, then they quietly aroused their troops and stole away in the darkness to safety.

Washington knew he had just lost a magnificent opportunity to end the whole conflict, and he blamed Lee. Lee was court-martialed and eventually dismissed from the service. It was not until a generation later that Howe's private papers disclosed the traitorous bargain Howe had made with Charles Lee while the latter was a prisoner. Meanwhile, Washington moved into a monitoring position not far from New York where he could carefully watch the British until the French arrived.

Actually, the arrival of the French fleet did not change the situation significantly, and Washington was very disappointed. Even when the French ships had a clear advantage they would not attack. Both the French and British navies sailed up and down the coast in great flurries, but neither side took any chances and neither side won or lost any battles. There began to be a great strain between the Americans and their new, so-called French allies.

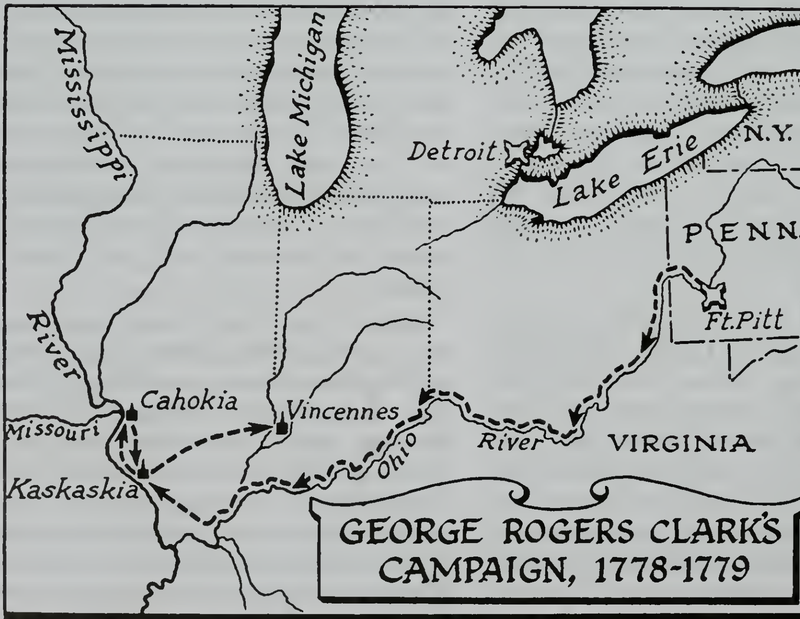
Two Years of Terrorism

Early in 1778, the British War Office began to carve out for itself a huge black mark in history as it allowed Sir John Butler to mobilize the Indians and lead them forth on terrifying raids against the American frontier. We read:

"On July 4—to mock American independence—Colonel Sir John Butler struck at the Wyoming Valley in [western] Pennsylvania. Hundreds perished. Men were burnt at the stake or thrown on beds of coals and held down with pitchforks while their horrified families were forced to witness their torment. Others were placed in a circle while a half-breed squaw called Queen Esther danced chanting around them to chop off their heads. Soon the entire frontier was in flames."[3]

Since Congress did nothing to quench the Indian massacres, they began to spread through the Ohio Valley and Northwest territory. Finally, Patrick Henry, who had become governor of Virginia, commissioned a 25-year-old frontiersman, George Rogers Clark, to lead a company of around 175 men into the region and wipe out the British outposts. He was also to make friends with the French settlers on the basis that France was now an ally of the United States. Clark succeeded in capturing both Kaskaskia (in Illinois) and Vincennes (in Indiana) that year. However, Colonel Henry Hamilton, who paid bounties for the scalps of Americans and was therefore called the "Hair-buyer," succeeded in recapturing Vincennes.

In February of 1779, during a bitterly cold winter, young George Rogers Clark mobilized another tiny force of 130 men—of which half were French—to wipe out the base of terrorist operations and recapture Vincennes.



George Rogers Clark effectively captured the Northwest Territory for the struggling new nation.

A historian writes:

"Few marches in American history equal the ordeal which awaited Clark's men. Torrential rains and floods barred their path. Much of the time they floundered through icy water up to their chests. Men who sank beneath the surface were fished up and placed in canoes. But Clark urged them on, ever onward, until at last they debouched before Vincennes. Here Clark deceived Hamilton's superior force by marching his little band back and forth to create the impression of a thousand men approaching. That was enough for Hamilton's Indians. Hamilton surrendered Vinçennes."[4]

Later, Indian depredations broke out again. These were primarily in western New York and western Pennsylvania. General John Sullivan was sent out with 5,000 men to make a direct attack on the Indian settlements rather than merely capture British outposts as in the past. In the summer of 1779, Sullivan's forces scourged the Iroquois towns of the Five Nations of the Long House. At least 40 of their villages were completely destroyed and the people were dispersed. The Five Nations never recovered from this affliction of desolation. Nevertheless, the British still held Fort Detroit, from which Indian pillaging continued by fits and starts right up to the end of the war.

The British Look South

Ever since Sir Henry Clinton took over from General Howe, he had been looking for some vulnerable spot where he could take the offensive. With Burgoyne gone and Washington virtually looking over his backyard fence, Sir Henry decided to look South. In November 1778 Clinton sent Colonel Archibald Campbell with 3,500 regulars to attack Savannah. Campbell was assisted by General Augustine Prevost, who marched up with British reserves from St. Augustine, Florida. On December 29, 1778, Savannah fell. Prevost then set about entrenching the British and Tory forces throughout Georgia.

However, a new dimension was added to the picture when Spain declared war on Britain on June 16, 1779. In many ways this complicated Britain's subjugation of her rebellious "colonies" in America. It meant a further dividing of her fleet to protect Gibraltar and Minorca. This also weakened her naval strength in the West Indies. France immediately saw an opportunity to settle some old scores and began capturing one British island after another with the French fleet that had been originally assembled to help Washington. The loss of these British holdings became so great that Sir Henry Clinton had to dispatch 8,000 regulars from New York to the West Indies. This left the New York front so vulnerable that Clinton withdrew all of his occupation troops from Newport, Rhode Island, as reinforcements. In a sense, Washington did better with the French fleet conquering British possessions in the West Indies than when the French were merely flaunting their sails up and down the New England coast.

Washington had hoped that after the French had satiated their appetite for British islands, they would return and help him liberate New York. Instead, the French admirals decided to liberate Savannah, gateway to the South. Savannah was defended by merely 2,400 volunteer Tories rather than regulars. The French failed to dislodge them.

When the battle of Savannah was fought on October 3, the French-American losses were 850 dead and wounded against British casualties of only 150. The French fleet loaded up its survivors and

The war action in 1780 and 1781 centered in the South, as British General Cornwallis marched across three states.

sailed away. The whole affair left Washington sick at heart. It was a waste.

From the British standpoint, however, this unexpected triumph in Georgia gave them the elixir of victory they needed. Tories came out of the closet all over the South, and Sir Henry Clinton prepared for a major campaign in the South with whole regiments to be comprised of American Tories.

Washington, meanwhile, was bitterly disappointed that the French admirals would not help him liberate New York. As winter came on, he had no alternative but to head for the hills and go into winter quarters at Morristown, New Jersey, for the second time. His stay in Morristown had been completely miserable in 1778, but it was nothing compared to the wretched conditions he suffered there in the winter months of 1779-80.

Congress had been shuffling about the country like a band of refugees, and its influence over the various states was rated barely above zero. Furthermore, its order to Washington to "live off the country" was an insult. Every one of the middle and New England states was prospering. So was Virginia and much of the South.

Washington's virtual abandonment by the leaders of the Confederation was sorely aggravated by the arrival of one of the worst winters anyone could remember. Even the New York harbor froze over, and howling blizzards swept down on the American winter quarters. The wind blew their pitiful, ragged tents away, and both officers and men often awakened from fitful sleep to find themselves buried in deep drifts of snow. Some of the soldiers had neither tents nor blankets, and many died while struggling with bare feet and no coats to build rude huts.

The spectre of continuous starvation hovered over the camps. Washington wrote that "we have never experienced a like extremity at any period of the war."[5]

Another day he wrote, "We have not at this day one ounce of meat, fresh or salt, in the magazine."[6]

The tragedy of it all was that while Americans starved and died at Morristown, other Americans in the surrounding states waxed fat and prosperous. When Washington could endure it no longer, he literally raided the countryside for supplies. The people were given receipts or virtually worthless Continental dollars for their confiscated goods, but this failed to diminish the feelings of hatred and contempt which these measures generated toward the army that was fighting for their freedom.

Alexander Hamilton, Washington's aide, wrote: "We begin to hate the country for its neglect of us. The country begins to hate us for our oppression of them."[7]

The casualties and suffering at Morristown during the winter of 1779–80 were worse than those at Valley Forge. It would have been hard to convince any man in the camp, except perhaps Washington, that victory and peace were barely eighteen months away.

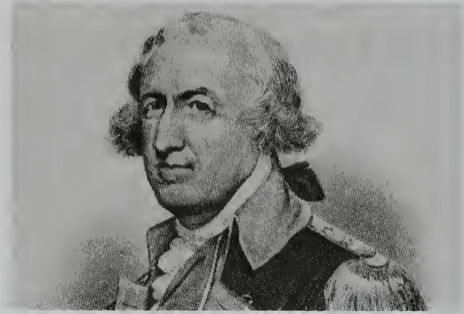
Britain Plays Its Last Card

Once the whole state of Georgia was safely back under the Crown, Sir Henry Clinton determined to make it the base for the gradual conquest of the entire South. After that would come the pacification of the North. During the spring of 1780, Clinton was encouraged immeasurably as several thousand loyalists or Tories throughout the South rallied to the British flag. This gave Clinton the encouragement he needed to launch his campaign.

The first target was Charleston, where Fort Moultrie had held off the British during June 1776. But this time it fell. Charleston was captured and 5,500 prisoners were taken, including General Benjamin Lincoln and some of the best American leaders in the South. This disastrous defeat remained the worst in U.S. history until the fall of Bataan in the Philippines during World War II.

It was during this campaign, however, that the British Tories began to develop a reputation for "atrocities to prisoners." Colonel Banastre Tarleton was one of the worst of these. Heading up a column of cavalry, he would corner a contingent of patriots during a battle and, even with white flags flying and arms grounded, he would use both sword and bayonet to slaughter them. These atrocities against helpless prisoners provoked similar bloody and unlawful excesses by some of the patriots against Tory prisoners.

Clinton had placed the entire British



General Horatio Gates

campaign in the South under General Cornwallis. This led Washington to recommend to Congress that the Americans have an over-all commander as well. He recommended a loyal and experienced leader from several previous campaigns, General Nathanael Green. However, the Congress rejected the nomination and chose Gates. Washington could have been embittered by this appointment because he knew that during the three previous years, the commander of the northern army, General Horatio Gates, had been covertly wooing Congress and sending poison letters to some of the members criticizing Washington and hoping to replace him.

But while all this was going on, a great patriot who had come to America with Lafayette began mobilizing the American forces in the South better than anyone. His name was Baron Johann de Kalb. Born in Bavaria, Germany, he had gone to France and become a brigadier general in the French Army in 1761. He added "Baron" to his name as a mere embellishment. Being a close friend of Lafayette, he accompanied him to America to fight in the Revolutionary War. Brilliant and experienced in military ways, he attracted patriots to volunteer for duty throughout the South. When Congress made Horatio Gates the regional commander, it appointed General de Kalb second in command.

First British Victory at Camden, South Carolina

General Gates thought he and the patriot forces had everything in their favor when he chose to make their first show of strength at Camden, South Carolina. He had twice as many men as Cornwallis, and many so-called patriots who had recently turned Tory now turned patriot again. But Gates lost the battle. His own ragged militia was greater in numbers but collapsed under the assault of fierce bayonet charges which "threatened them with the prospect of cold steel in their bellies." Gates had also made the mistake of feeding his army a breakfast of meal mush with medicinal molasses which gave many of the American troops diarrhea.

As the American flanks crumbled both right and left, the great Horatio Gates, who wanted to replace George Washington, turned his horse up country and fled frantically north. His flight was not just for temporary safety, but he fled nonstop for sixty miles to Charlotte, North Carolina! In this, he set a record. No general in history had ever abandoned his own army and fled from the scene of battle so fast and so far.

Gates left behind him de Kalb, his second in command, who didn't flee. The huge German had his horse shot out from under him, but he fought on foot. A saber slash laid open his scalp, and he still fought on.

America's General Gates lost the battle at Camden, South Carolina, through bad judgment and cowardice.

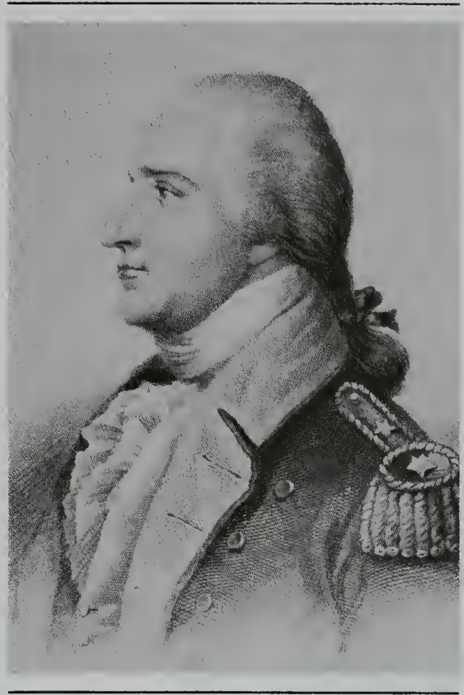
Cornwallis threw 2,000 crack troops against de Kalb and the valiant 600 who stayed with him. Instead of surrendering, de Kalb called for a bayonet charge and his shouting, cheering patriots nearly broke through the wall of Redcoats surrounding them. Bullet after bullet struck de Kalb, but he kept fighting. Finally, as his last stroke struck down a British soldier, he fell dying. He had eleven wounds in his body, most of them fatal.

Another British victory followed two days later as General Sumter was defeated by the terrible Tarleton and his "give no quarter" cavalry.

Betrayal by Benedict Arnold

News from the North also lifted British hearts. Major General Benedict Arnold had finally succumbed to the teasing of his Tory wife and deserted to the British! In the process he almost succeeded in betraying General Washington and the entire army at West Point into British hands.

Arnold, clearly the most capable field commander on the American side, had been snubbed by Congress and had fallen from the good graces of Washington when Arnold was made commander in Philadelphia. His offense was putting on a lavish party at Valley Forge where so many Americans had starved and died. While at Philadelphia he had married a spoiled Tory woman of high social standing who spent money as if it grew on trees. Thus, the limping Arnold, with one leg now an inch shorter because of his two bullet wounds, found himself with an extravagant wife and hard pressed for funds. He was awaiting a court-martial hearing for misuse of public funds at the time he turned traitor.



Benedict Arnold

It was later found that money was the principal reason he had turned against his country. It fact, it was learned that he bargained with the British like a fish monger. His price was not thirty pieces of silver but ten thousand pounds and a general's commission. The entire plot was uncovered on September 25, 1780, when the head of British intelligence, Captain John Andre, was captured with the secret plans in his possession. Washington was able to safeguard West Point in time but Arnold escaped. Later, Arnold led British armies against American forces, sometimes with devastating consequences. John Andre was hanged October 2, 1780, in spite of pleas from Sir Henry Clinton on behalf of his intelligence chief. Washington had not forgotten the disdain of the British when he had pleaded with them to spare the life of young Nathan Hale.

Rustic backwoodsmen smashed their British opponents in the battle at King's Mountain, North Carolina.

First British Defeat at King's Mountain

Cornwallis was so elated over his victory at Camden, South Carolina, that he moved on to conquer the whole state of North Carolina. This was to be the second stage of his campaign. In order to protect himself from a flank attack out of the interior, he assigned Major Patrick Ferguson to parallel his movements inland. Ferguson was one of the most hated men in the South, but he was a remarkable soldier. He had invented a breech-loading rifle which could be fired several times a minute—an unheard of feat in those days. However, he had a passion for engaging in merciless pillaging of all who fell in his path.

In his latest assignment, Ferguson made the mistake of threatening the Scottish-Irish frontiersmen dwelling in the western mountains. They immediately rallied their fellow frontiersmen from Virginia and the Carolinas. Then they took their long rifles in hand and caught up with Ferguson and his troops at King's Mountain. Ferguson heard they were coming and entrenched himself on the mountain so thoroughly that he boasted that neither the demons from hell nor God Almighty could dislodge him. But the frontiersmen did it. On October 7, 1780, these backwoodsmen not only took the mountain but sent Patrick Ferguson home to make peace with his Creator.

News of this defeat came as a great blow to Cornwallis. As it turned out, the Battle at King's Mountain marked the beginning of the end for the British in the South.

The Patriot Cause Almost Becomes Unraveled

On January 1, 1781, the fabric of what passed for a confederation of the United States nearly came undone. A spirit of mutiny was running through the whole American army. It first broke out at Morristown where 2,400 heard that cash was being paid to new recruits while the Pennsylvania line at Morristown had not been paid for a year. Furthermore, the whole camp was freezing from lack of clothes and decent housing. So they mutinied. After one officer was killed, they started their march on Philadelphia to vent their anger on Congress. Washington had them intercepted at Trenton, and the explosive situation was largely defused when part pay was given to some of the soldiers and others were discharged.

Shortly afterwards, Washington had to take more severe action when the enlisted troops from New Jersey mutinied. Two ringleaders were shot and a near disaster was barely averted.

Morale was lifted somewhat when news arrived a short time later that on January 17, 1781, General Daniel Morgan had killed or captured nine-tenths of a British army led by "terrible Tarleton."

The next news came on March 15, 1781, concerning one of the bloodiest battles of the war, which took place at Guilford Courthouse near the western foothills of North Carolina. Although Cornwallis thought he had won this battle, the British rate of casualties made it a Pyrrhic victory. Over thirty percent of the forces of Cornwallis were killed or wounded during this bloody clash of arms at Guilford Courthouse.

The war continued to seesaw back and forth until Cornwallis finally abandoned North Carolina and went up into Virginia. There Benedict Arnold had mobilized 1,700 Tory volunteers and General William Phillips had sent down reinforcements from New York. This gave Cornwallis a combined force of around 7,200 men. After entering Virginia, Cornwallis confidently brought this entire force into Yorktown, just ten miles from Williamsburg. There he immediately began turning that small tobacco shipping port on the York River into a powerful naval and military base.

Daniel Morgan defeated Britain's "Bloody Ban" Tarleton in the battle at Cowpens, South Carolina, in January 1781.

Washington inspects the French batteries in the trenches at Yorktown. (Drawing by Rufus F. Zogbaum.)

The Battle of Yorktown

It is a strange phenomenon in history that very often the triumph of a monumental victory comes close on the heels of what might have been a colossal defeat. It was so with Washington in 1781, when the midnight darkness of despair suddenly gave way to the incredible events which led to Yorktown.

In capsule form the Battle of Yorktown is like a three-act drama, with everything falling into place better than most Hollywood movie scripts.

For months Washington had been planning an attack on New York. The French had sent over a whole army of 5,000 men under General Rochambeau, and a strategy had been agreed upon for the assault. However, unbeknown to Washington, the French really did not want a campaign against New York. Their admirals wanted to make their base of operations around the Chesapeake Bay, where there were deep waters and safe harbors. Furthermore, it was closer to the West Indies where the French had been capturing British islands. General Rochambeau secretly suggested to the French Admiral de Grasse that he bring his ships from the West Indies to the Chesapeake Bay instead of New York. Nevertheless, in corresponding with Washington, Rochambeau continued to write as though the target were New York. Some of these deceptive letters were intercepted by the British, so they also concluded that an attack on New York was being planned.

The next act in this drama was the sudden appearance of the British forces under Cornwallis at Yorktown. About this same time Washington learned of the French plan to bring their West Indies fleet into Chesapeake Bay, and he excitedly saw an opportunity to trap Cornwallis. Apparently Washington didn't mind the temporary deception of his French allies too much because at least it threw the

British off track by having them think the attack would be against New York. In fact, Washington had just made an in-depth survey of the British defenses around New York and found them far too strong for an attack with available resources.

So Washington developed a masterful charade of pretending he was about to attack New York while he was actually preparing his men for a fast march southward toward the Chesapeake Bay.

The scheme was a remarkable success. Before the British knew what was happening, Washington had gotten at least to Philadelphia. Only fifty miles separated him from the ships that could carry most of his men to the Yorktown battlefield. The big question was, would there be any French ships to meet him?

The British wondered the same thing. Sir Henry Clinton had dispatched 19 ships southward to engage the French fleet when it arrived from the West Indies. But they were too late. The French fleet had not only arrived but it had bottled up the entrance to the Chesapeake and sealed off Yorktown. The two navies engaged each other in an open sea battle, but the French had 24 ships with 1,700 guns against 19 British ships with only 1,400 guns. The outcome was predictable, and the British withdrew so their fleet could sail back to New York for some badly needed repairs.

Now the battle scene was set up at Yorktown exactly as Washington had hoped. Cornwallis was trapped against the York River and there were no British ships to bring him supplies or evacuate his troops. If he tried to cross the York River to Gloucester he would meet the American militias that were pinning down the 700 men he already had there. Thus the battle began.

On October 9, 1781, the French battery opened up and then the American battery began to blast, with Washington igniting the first shot. The British forces numbered 7,000 while the besiegers numbered 16,000. Without the advantage of vastly superior numbers the Americans and their French allies probably would have had a difficult task dislodging the British from their well-engineered redoubts and deeply dug trenches.

At one critical point much depended on the ability of the Americans to take two redoubts near the river. Alexander Hamilton led the raid on one. Using only their bayonets, his brigade climbed the redoubt with unloaded muskets. After scaling the parapets, Hamilton and his men won a bloody hand-to-hand fight. The French did the same to capture the second redoubt. Gradually the Americans and French began closing in.

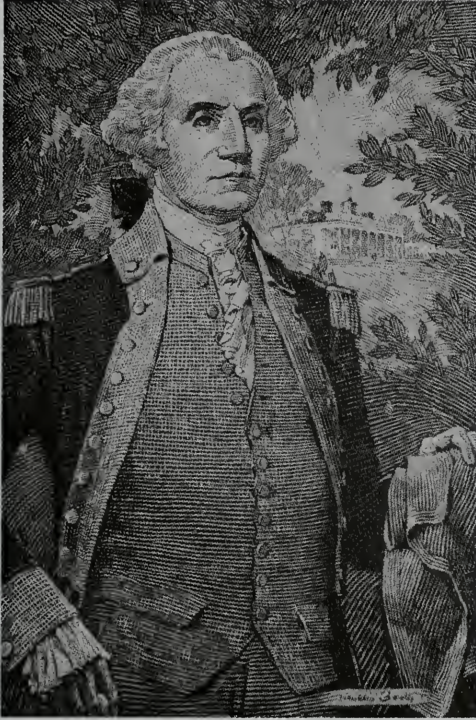
The final great battle of the Revolutionary War was fought at Yorktown, Virginia, in 1781.

After seven days and nights of fighting, the terrified Cornwallis made a desperate attempt to get his troops across the York River to Gloucester. His plan was to fight his way northward until he could escape along the coast. But it was not to be. Barely were his men loaded on boats to row across the York when a virtual hurricane suddenly arose and blew the boats directly back to the Yorktown river bank. Cornwallis expostulated that it even looked like God was on Washington's side.

On the morning of October 17 a teenage Redcoat drummer boy appeared on a British parapet amidst a dreadful cannonading and beat his drum calling for a parley. No one could hear him in all the din, but he was seen and his message anticipated. The guns fell silent, and the parley began. Cornwallis asked for a 24-hour armistice. Washington gave him two hours. The terms were unconditional surrender.

It was noon, October 19, 1781, when two lines formed on the Yorktown battlefield. One line was headed by Washington and the Americans. In the other line stood the French. Between them slowly marched the defeated British. Cornwallis did not come. He excused himself as being indisposed. Instead, he sent his sword of surrender by the hand of General O'Hara. O'Hara tried to surrender the sword to the French commander but he was waved back to Washington. When Washington saw that a subordinate officer had come with the sword of surrender he told O'Hara to make his presentation to one of his own subordinates, General Benjamin Lincoln. The sword ceremony

On October 19, 1781, the British surrendered to General George Washington at Yorktown, effectively ending the war.



George Washington

was the signal for the British to march forward and surrender their weapons as they acknowledged themselves to be captured prisoners of war. The Redcoats were led by a band playing a tune entitled "The World Turned Upside Down."

The news of the capture of Cornwallis had a devastating impact on England. Not since the fall of Burgoyne had such a shock wave shattered the morale of the British commonwealth. The king wanted to continue, but the heart of the English were no longer in the war. Numerous opportunities to reinvest the American seaboard during the next six months were ignored. The British warships went on to avenge themselves against the French fleet, but from this point on the war wound down to a sudden halt.

The Founders' "Great Experiment" Hangs on One Man

Seven months after Yorktown and long before the peace was signed, Washington received a most disturbing letter from one of his officers, Colonel Lewis Nicola.

Colonel Nicola outlined the abuse and neglect the army had received from the Congress as well as the states during seven years of continuous warfare. He inventoried a long list of complaints suffered by the men who had risked their lives many times to throw off the British yoke and were yet lucky enough to still be alive: They were in rags. They had not been paid. Their food was often so scanty it was not fit to be served as slop to pigs. Colonel Nicola then told Washington what the Commander already knew—that in all of this there was neither justice nor gratitude. He went on to say there was only one man who could give the soldiers their dues and that was Washington. Nicola pleaded with his general to accept the crown and serve as George I of the United States. He confessed there was no machinery to elect a national leader into office, but he assured Washington the army would put him in a position of power that none would dare to challenge it.

Washington was horrified that such a sentiment was even festering among his troops. He wrote back a letter, with his aides signing as witnesses, that this temptation to abandon the revolution and return to Ruler's Law would nullify everything for which the Revolution had been fought. He said this Nicola letter was the worst thing that had happened to him in the whole war.

Nevertheless, in spite of Washington's strong feelings expressed in this letter, his reply to Nicola did not placate the rumbling restlessness of the military. While waiting for the peace treaty to be signed, nothing whatever was improving. Congress was as weak as ever, and the poverty of the army was as bad as when they were fighting, perhaps even worse.

Ten months after the Nicola letter, a circular began appearing among the military which came to the attention of Washington on March 10, 1783. It called for a military revolt and the setting up of a military dictatorship, with or without Washington. Washington hurriedly called for a meeting of his officers on March 15. He reviewed their grievances and expressed a determination to work with Congress for a just solution, but he emphatically denounced any and all who would attempt "to open the floodgates of civil discord and deluge our rising empire in blood."[8]

The crisis point at this meeting occurred when Washington saw that the officers were still sullen and silent. His plea had failed to persuade them. Finally, he reached into his pocket and pulled out a letter. He said there were Congressmen anxious to help and he wanted to read a letter describing what was being planned. He held up the letter, which was closely written due to the shortage of paper, and tried to read it. Biographer James T. Flexner describes what happened:

"The officers stirred impatiently in their seats, and then suddenly every heart missed a beat. Something was the matter with His Excellency. He seemed unable to read the paper. He paused in bewilderment. He fumbled in his waistcoat pocket. And then he pulled out something that only his intimates had seen him wear. A pair of glasses. He explained, 'Gentlemen, you will permit me to put on my spectacles, for I have not only grown gray but almost blind in the service of my country.'

"This simple statement achieved what all Washington's rhetoric and all his arguments had been unable to achieve. The officers were instantly in tears, and, from behind the shining drops, their eyes looked with love at the commander who had led them all so far and long.

"Washington quietly finished reading the congressman's letter, walked out of the hall, mounted his horse, and disappeared from the view of those who were staring from the windows."[9]

As those who had fought beside Washington in the heat of many battles pondered his words, they voted unanimously (with one abstention) to support their leader in his peaceful, constructive approach to solving their problems.

Historians have since emphasized that the whole American experiment hung on this one speech at Newburgh, New York. A year later Thomas Jefferson wrote a paragraph of special praise about Washington. He said, "The moderation and virtue of a single character have probably prevented this revolution from being closed, as most others have been, by a subversion of that liberty it was intended to establish."[10]

The Need for a Constitutional Convention

However, the seductive thought of putting the American house in order by raising up a monarchy would not go away. Washington pleaded with the governor of every state and the Congress itself to call a constitutional convention and restructure the form of government on more practical lines before it was too late. Washington wrote to John Jay:

After the war, Washington bid a tearful farewell to his officers at Fraunces' Tavern in New York.

"What astonishing changes a few years are capable of producing. I am told that even respectable characters speak of a monarchical form of government without horror. From thinking proceeds speaking, thence to acting is often but a single step. But how irrevocable and tremendous! What a triumph for our enemies to verify their predictions! What a triumph for the advocates of despotism to find that we are incapable of governing ourselves, and that systems founded on the basis of equal liberty are merely ideal and fallacious!"[11]

A preliminary treaty of peace was signed between the United States and the British on November 30, 1782, and the definitive treaty was signed on February 3, 1783. On the same day, treaties were signed between Britain, France, Spain, and the Netherlands, the latter having also entered the war. None of these nations gained substantially from this war except the United States. England lost much.

Washington waited until the last of the British forces had disembarked from New York on November 25, 1783, before he

was willing to depart for home. On December 4 he went to Fraunces' Tavern in New York to bid his officers farewell and embrace each of them. On December 23 he reported to the Congress (which had moved to Annapolis), and there he resigned his commission. Then Washington spurred his horse homeward in time to arrive on Christmas Eve.

In resigning his commission Washington had told the Congress he intended to take "leave of all the employments of public life." He wanted to dispel any remaining suspicion that he might still be persuaded to head up a military government to solve the nation's problems. He wanted nothing more than the peace and tranquillity of a quiet family life at Mount Vernon.

Little did he know that the greatest test of the "great American experiment" lay directly ahead and that his personal involvement would be inescapable.

In December 1783 George Washington resigned his commission as commander in chief of the American armies, returning to private life at Mount Vernon.

1. Leckie, *The Wars of America*, pp. 180–81.

2. Ibid., p. 181.

3. Ibid., p. 187.

4. Ibid., pp. 189–90.

5. Miller, *Triumph of Freedom*, p. 481.

6. Bruce Lancaster, *From Lexington to Liberty* (New York: Doubleday, 1955), pp. 380–81.

7. Miller, *Triumph of Freedom*, p. 483.

8. Fitzpatrick, *The Writings of George Washington*, 26:227.

9. James T. Flexner, *George Washington in the American Revolution, 1775–1783* (Boston: Little, Brown and Company, 1967), p. 507.

10. Bergh, 4:210.

11. Fitzpatrick, *The Writings of George Washington*, 28:503.

CHAPTER

THE NEED FOR A MIRACLE

The perils of the Revolutionary War subsided with the signing of the peace treaty in 1783, but the perils of freedom increased. The country needed just what George Washington and James Madison later called it—a miracle. The country was already drifting down the swift current of internal revolution which France would follow just a few years later. The Founders knew they had to somehow halt the explosive forces which were splitting apart the states and threatening to shatter the union.

In one sense the problem was very simple. The people had not learned how to govern themselves as a united republic. However, the solution was both frightening and complex. How should they reorganize themselves so that the Union would not collapse?

Despite the terms of the peace treaty, the British continued to maintain forts on American soil after the war.

In a moment we are going to read the words of the Founders themselves as they describe the terrifying perplexity of these anxious months when the very existence of the United States as a nation lay suspended on a thread. First, however, let us examine the turbulent circumstances through which the nation was passing between 1783 and 1787. Everyone seemed certain the *dis*-United States would soon collapse.

England Expected the United States to Collapse

The problem with freedom is that so few people want to participate in the governing process. It is a tedious, painful, aggravating, and frustrating chore. Only when each citizen shoulders his share of the task is the burden of government endurable. However, unless the people have been educated to take their part, they instinctively shrug it off and say, "Let George do it." And that is exactly what George III was anxious to do. British forces were waiting close by, expecting these clumsy, rebellious "colonies" to fall apart at any moment. As a result, the Congress could not induce the British to withdraw their garrisons from the Canadian border even though they were located on territory ceded to the United States in the peace treaty of 1783.

These included five posts along the northern border—two posts on Lake Champlain, and three posts at Ogdensburg, Oswego, and Niagara. There were also two more posts at Detroit and Michilimackinac. Ostensibly they were of a temporary nature to help protect British fur operations and Indian relations, but this prickly situation was not settled until 1796. It almost resulted in another war.

Spain Expected the United States to Collapse

The southwest border of the new republic was equally explosive. Spain had secured Florida and the southern part of what is now Mississippi and Alabama, calling it East Florida. She also held New Orleans and planted garrisons at Natchez and what was later the Port of Vicksburg. Spain even denied that the British had a right to cede the east bank of the Mississippi to the United States. In this region, the Creek, Choctaw, and Cherokee nations entered into alliances with Spain, and began making raids on American settlements along the Cumberland and Tennessee rivers.

In the midst of these economic and political extremities, a number of American backwoods politicians, including General James Wilkinson of Kentucky, decided to defect from their allegiance to the United States and accept pensions from Spain, with the understanding that they would promote the secession of everything from the Mississippi to the Appalachian Mountains. This territory would then become a province of Spain.

Many Americans Expected the United States to Collapse

After the Revolutionary War, a spirit of sectionalism began to divide the states. In fact, by 1785 there was widespread talk of imminent civil war. It seemed the "weak

and helpless government was unable to defend its sovereignty against Britain, Spain, or the western Indians. Alarmed conservatives believed the sharp social struggles within the states presaged civil war. There was talk of forming three new confederations, one for each section —New England, Middle States, and the South."[1]

Signs of Internal Revolt

As we have already seen, the first suggestion of mutinous revolt against the Congress came from military circles. Both officers and soldiers felt that the men who had fought and bled were going to be unfairly treated as the war came to a conclusion.

Now that the victory had been won, Congress instructed the army to disband and return home without being paid. The tenseness of the situation was reflected in several incidents, some of which we have already mentioned. For example:

1. On January 1, 1781, over 2,400 soldiers mutinied. They killed an officer and launched a protest march to Philadelphia to vent their anger on Congress. Washington intercepted them at Trenton and worked out an accord, but he lacked the resources to provide any genuine solutions to their truly legitimate complaints.
2. About this same time the New Jersey line mutinied and two of the leaders had to be shot before order was restored.
3. During June 1783 a body of around a hundred soldiers of the Pennsylvania line stormed the seat of Congress in Philadelphia and so terrified the members that they fled to Princeton and then to Annapolis for safety. The seat of government was not restored to Philadelphia until after the Constitution was adopted.
4. After the peace treaty, the foremost business interests in the nation seriously considered uniting with the army to set up a military dictatorship in order to save the country from total ruin. Historian James Thomas Flexner writes:

"Out of this seemingly desperate situation there hatched a desperate expedient, which was spread from one mind to another by letter and conversation and

On New Year's Day, 1781, over 2,400 soldiers mutinied, marching in protest on the national capital at Philadelphia.

semi-public toast. It appealed to the federal creditors, who were already organizing a national association, to outraged soldiers, to congressmen and ordinary citizens who dreaded disunion. Prime movers included the two financial Morrises — Robert and Gouverneur — and the three officers — McDougall, Brooks, and Ogden — who constituted the army's official committee to Congress. Among the correspondents in Washington's camp on the Hudson were two top generals — Gates and Knox — with their staffs. Alexander Hamilton gladly cast himself as spokesman and prime agitator.

"This promising coalition wished the army and the creditors to make common cause, each group swearing to stand by the other. The army would fire the opening gun by announcing that it would refuse to disband even if peace were declared, living if necessary off the land, until the states took the necessary steps to put the federal government on a sound financial basis that would enable Congress to pay its debts.

"Such an alliance between the business community and an angry army in a cause that could be described in terms of patriotism, and rights for the poor soldier, and the establishment of order will be recognized by the modern reader as a perfect springboard for fascism. The eighteenth century did not know of fascism, but it was familiar with Roman precedent."[2]

Depressions, Taxes, and Riots

All along the Atlantic seaboard Americans were suffering the depths of a paralyzing depression. As we shall see in a moment, a considerable amount of economic chaos was the direct result of inflation during the war. Some states provided relief for their poverty-stricken farmers by issuing scrip, which was loaned to the farmers according to the value of their land. This scrip could be used to pay taxes to the state. They also invoked the "stay law," which postponed the collection of all debts and mortgages for a certain number of years.

To avoid levying additional taxes, Virginia took advantage of inflation and paid off her debts at their fantastically depreciated value. This allowed her to discharge her debts on a basis which was sometimes a thousand to one.

The Commonwealth of Massachusetts did none of these things. The state adopted the policy of paying its obligations in gold or silver and had to impose a mountain of taxation on the people to cover it. At least 40 percent of the total revenue was collected by poll taxes (at so much per head), placing a greater burden on the poor in comparison to the rich. Trade stagnated and farm produce became a drug on the market. There was virtually no employment for common labor, and soon droves of citizens were being stripped of their real estate, their cattle, and household necessities because of foreclosures by their creditors. When these assets failed to satisfy their creditors or the tax collectors, they faced a term in the debtor's prison. In Worcester County alone, 92 persons were imprisoned for debt in 1785.

In desperation, the people finally resorted to the same measures of defense that they had used against the Coercive Acts of George III. Mobs of farmers assembled to prevent the courts from sitting, so there would be no more judgments for debts. They held county conventions to pool their grievances and draft petitions. They appointed committees of correspondence between counties.

This was a grim joke on men like Sam Adams, who were now respectable members of the state council. They reluctantly pro-

When Daniel Shays led a force of 1,100 farmers in rebellion in 1787, he was met by a determined militia.

posed to hang anyone who used the same methods they had employed in 1774–1776.

Shays's Rebellion

Unable to solve their immediate problems, state officials had the governor issue a proclamation against "unlawful assemblies" and had the militia sent out to disperse them. The desperate farmers pushed reluctant Daniel Shays into the chairmanship of a committee which was determined to prevent the supreme court of Massachusetts from sitting at Springfield, lest it indict the rebelling farmers for treason.

On January 24, 1787, a force of 1,100 men led by Shays entered Springfield to seize the courthouse and the federal arsenal. They suddenly found themselves enveloped in a withering blast of artillery fire, which killed and wounded a number of the poorly armed rebels. The survivors fled in the snow to Petersham, where they were attacked again and dispersed after many prisoners were taken. Shays, a former captain in a Massachusetts line regiment, escaped to Vermont.

Fourteen of the rebels were sentenced to death, but when things had cooled down they were pardoned or given short sentences.

Public opinion throughout the United States recognized the serious implications of Shays's rebellion. It became apparent that raw freedom without economic stability was certainly not the "pursuit of happiness" Americans had been talking about during the Revolutionary War. Obviously some serious mistakes had been made in dealing with the fiscal policies of the infant republic. The worst of these was cranking up the engine of inflation.

The congressional approach to money supply needs quickly led to rampant inflation.

The Cause and Consequences of Inflation

When the Revolutionary War first loomed up before the Second Continental Congress in 1775, it was obvious that it could not be fought without money. A country at war must enter the marketplace and divert goods and services from their normal channels to fill the needs of military logistics. The most practical procedure is to impose taxes on the people. This raises the money for the emergency and at the same time reduces the money supply available to private channels which might otherwise out-bid the government. Of course, the government might also borrow large quantities of money and pay it off with taxes later on. The only problem with the Continental Congress was the fact that it had no power to tax.

The only other method of financing the war was to print paper money as legal tender. Count Destutt de Tracy describes what this does:

"A theft of greater magnitude and still more ruinous, is the making of paper money; it is greater because in this money there is absolutely no real value; it is more ruinous because by its gradual depreciation during the time of its existence, it produces the effect which would be produced by an infinity of successive deterioration of the coins. All those iniquities are founded on the false idea the money is but a sign."[3]

Congress Forced into Inflated Financing

Increasing the money supply always promotes inflation or the depreciation of value because prices depend upon the level of the buyer's resistance. More money means more demands and the seller raises the price until the demands level off. Higher prices are therefore the result of the inflationary cycle, not the cause of it.

Since Congress had no authority to levy taxes, it began printing paper money

with the promise that the *states* would subsequently redeem it through *their* taxes. Altogether the Congress issued approximately $200 million in paper money. The states, however (instead of taxing their people to redeem this currency), turned around and printed $200 million of their own! Laws were then passed to force the people to use this paper money as though it had real intrinsic value. Any merchant who would not accept the new currency would forfeit his goods to the customer with no further payment whatever.

As prices began to rise, thereby reflecting the depreciating value of the Continental currency, some of the state governments indulged in price fixing, which only created shortages and solved nothing. Price controls take out the profit incentive which drives manufacturers to other means of making money. This creates shortages of the product and fosters blackmarketing, which, in turn, fosters bribery and eventually brings corruption to every stratum of society.

The skyrocketing inflation contributed much to the loss of confidence in the Congress as well as the state governments. Eventually the Continental dollar sank to a value of less than a penny, and finally even the government would not accept it for taxes or the payment of a government debt. Taxes began to be collected "in kind." The latter part of the war was fought by armies that had so little financial support they were forced to live off the land and to confiscate needed supplies and equipment from the people.

How Paper Money and Inflation Destroy Society

The Founding Fathers learned that inflation has a drastic impact on the character as well as the economy of a nation. It divides society. Employees strike against their employers. The governed turn against their government. The creditor brings the force of law to bear upon the debtor. The debtor is beside himself and, since he cannot pay, counts his former friends and creditors as his enemies.

Inflation pits the producer against the consumer, the populace against the speculator. It turns economics upside down. Sound money makes frugality and saving self-rewarding, but inflation makes it expedient to constantly spend the money before it is eaten up by its dwindling buying power. Instead of getting out of debt, people struggling under inflation find it advantageous to borrow heavily in hopes of paying off the debt in highly inflated dollars later on. Citizens with fixed incomes from insurance or pensions are literally robbed of their life's savings. Hatred, suspicion, reckless spending, and profligate living are characteristic of a society indulging itself in spiraling inflation. John Adams summarized the impact it had on the economy of the thirteen states:

"I am firmly of the opinion...that there never was a paper pound, a paper dollar, or a paper promise of any kind, that ever yet obtained a general currency [as money] but by force or fraud, generally by both. That the army has been grossly cheated; that the creditors have been infamously defrauded [some closed their shops to prevent being paid off with worthless paper money]; that the widows and fatherless have been oppressively wronged and beggared; that the gray hairs of the aged and the innocent, for want of their just dues, have gone down with sorrow to their graves, in consequence of our disgraceful depreciated paper currency."[4]

Washington's Lamentation over the State of the Nation

On November 5, 1786, some ten months before the Constitution was signed, Washington addressed the following comments to his fellow Virginian, James Madison:

In a typical scene from Shays's Rebellion, a blacksmith refuses to accept a writ of attachment for his debts.

"No day was ever more clouded than the present.... We are fast verging to anarchy and confusion.... How melancholy is the reflection.... What stronger evidence can be given of the want of energy in our government than these disorders? ... A liberal and energetic constitution, well guarded and closely watched to prevent encroachments, might restore us."[5]

On December 26, 1786, the following sentiments were expressed to General Henry Knox:

"I feel, my dear General Knox, infinitely more than I can express to you, for the disorders, which have arisen in these states. Good God! Who...could have foreseen, or ... predicted them?"[6]

On February 3, 1787, only about seven months before the signing of the Constitution, he wrote: "If ... any person had told me that at this day I should see such a formidable rebellion ... as now appears, I should have thought him a bedlamite, a fit subject for a madhouse."[7]

The Founders' Agony Which Led to a Constitutional Convention

Now we are ready to turn briefly to a few statements some of the other Founders made as they analyzed their defective Articles of Confederation and the travail of the thirteen liberated states which were struggling to build themselves into a nation. Much of the blame fell on the Articles themselves, although the real blame belonged to the lack of constitutional development. No one had ever created a system of self-government for a free people in modern times. Without quite realizing it, the Founders were the midwives at the birth of a nation. Unlike a normal birth, however, they were having to endure much of the suffering and birth pains themselves. But they were not alone. The soldiers had suffered. Their families had suffered. Business houses had been shattered and bankrupted. A whole nation was in travail.

No modern historian can capture the intensity of their feelings better than their own words as they described those terrible years when their entire political world seemed about to explode. The following extracts illustrate the point.

The Nation Had Reached the Lowest Level of Humiliation

Hamilton: "We may indeed with propriety be said to have reached almost the last

stage of national humiliation. There is scarcely anything that can wound the pride or degrade the character of an independent nation which we do not experience

"Are there engagements to the performance of which we are held by every tie respectable among men? These are the subjects of constant and unblushing violation.

"Do we owe debts to foreigners and to our own citizens contracted in a time of imminent peril for the preservation of our political existence? These remain without any proper or satisfactory provision for their discharge.

"Have we valuable territories and important posts in the possession of a foreign power which, by express stipulations, ought long since to have been surrendered? These are still retained to the prejudice of our interests, not less than of our rights.

"Are we in a condition to resent or to repel the aggression? We have neither troops, nor treasury, nor government.

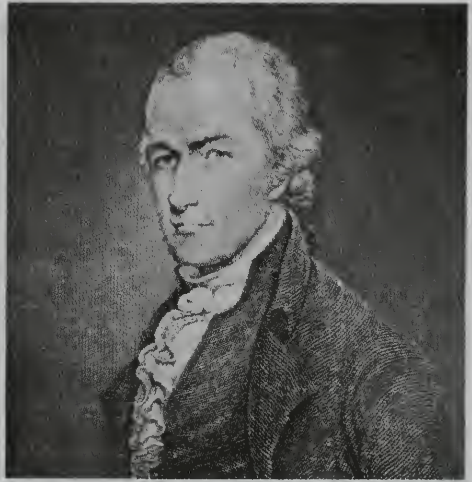
"Are we even in a condition to remonstrate with dignity? The just imputations on our own faith in respect to the same treaty ought first to be removed.

"Are we entitled by nature and compact to a free participation in the navigation of the Mississippi? Spain excludes us from it.

"Is public credit an indispensable resource in time of public danger? We seem to have abandoned its cause as desperate and irretrievable.

"Is commerce of importance to national wealth? Ours is at the lowest point of declension.

"Is respectability in the eyes of foreign powers a safeguard against foreign encroachments? The imbecility of our government even forbids them to treat with



Alexander Hamilton

us. Our ambassadors abroad are the mere pageants of mimic sovereignty.

"Is a violent and unnatural decrease in the value of land a symptom of national distress? The price of improved land in most parts of the country is much lower than can be accounted for by the quantity of waste land at market, and can only be fully explained by that want of private and public confidence, which are so alarmingly prevalent among all ranks and which have a direct tendency to depreciate property of every kind.

"Is private credit the friend and patron of industry? That most useful kind which relates to borrowing and lending is reduced within the narrowest limits, and this still more from an opinion of insecurity than from the scarcity of money.

"To shorten an enumeration of particulars which can afford neither pleasure nor instruction, it may in general be demanded what indication is there of national disorder, poverty, and insignificance that could befall a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes."[8]

Articles Gave Central Government No Power to Enforce Decrees

Hamilton: "The United States as now composed have no powers to exact obedience, or punish disobedience to their resolutions, either by pecuniary mulcts, by a suspension or divestiture of privileges, or by any other constitutional means. There is no express delegation of authority to them to use force against delinquent members.... The United States afford the extraordinary spectacle of a government destitute even of the shadow of constitutional power to enforce the execution of its own laws."[9]

Articles Lacked Fundamental Power for a Sound Government

W. Davie: "The general objects of the union are, 1st, to protect us against foreign invasion; 2d, to defend us against internal commotions and insurrections; 3d, to promote the commerce, agriculture, and manufactures, of America....

"As to the first, we cannot obtain any effectual protection from the present Confederation. It is indeed universally acknowledged, that its inadequacy in this case is one of its greatest defects. Examine its ability to repel invasion. In the late glorious war...Congress had a *discretionary right* to raise men and money; but they had no power to do either....

"The next important consideration, which is involved in the external powers of the Union, are *treaties*. Without a power in the federal government to compel the performance of our engagements with foreign nations, we shall be perpetually involved in destructive wars.... I shall only mention the British treaty as a satisfactory proof of this melancholy fact. It is well known that, although this treaty was ratified in 1784, it required the sanction of a law of North Carolina in 1787; and that our enemies, presuming on the weakness of our federal government, have refused to deliver up several important posts within the territories of the United States, and still hold them, to our shame and disgrace....

"Next ... is the regulation of *commerce*. The United States should be empowered to compel foreign nations into commercial regulations that were either founded on the principles of justice or reciprocal advantages.... Is not our commerce equally unprotected abroad by arms and negotiation? Nations have refused to enter into treaties with us. What was the language of the British court on a proposition of this kind? ...'You can make engagements, but you cannot compel your citizens to comply with them ...and you have no kind of power that can compel us to surrender any advantage to you.'...No nation will form any connection with us that will involve the relinquishment of the least advantage. What has been the consequence? A general decay of trade, the rise of imported merchandise, the fall of produce, and an uncommon decrease of the value of lands....

"Can our general government recur to the ordinary expedient of *loans*? During the late war, large sums were advanced to us by foreign states and individuals. Congress have not been enabled to pay even the interest of these debts, with honor and punctuality. The requisitions made on the states have been every where unproductive, and some of them have not paid a stiver.... Many of the individuals who lent us money in the hour of our distress, are now reduced to indigence in consequence of our delinquency. So low and hopeless are the finances of the United States, that, the year before last Congress was obliged to borrow money even, to pay the interest of the principal which

The Articles of Confederation gave Congress too little power over trade and navigation—a source of constant irritation to Americans.

we had borrowed before. This wretched resource of turning interest into principal, is the most humiliating and disgraceful measure that a nation could take, and approximates with rapidity to absolute ruin....

"There are several other instances of imbecility in that system. It cannot secure to us the enjoyment of our *own territories,* or even the *navigation* of our own rivers. The want of power to establish a uniform rule for *naturalization* through the United States is also no small defect, as it must unavoidably be productive of disagreeable controversies with foreign nations....

"The *encroachments* of some states on the rights of others, and of all on those of the Confederacy, are incontestable proofs of the weakness and imperfection of that system. Maryland lately passed a law granting exclusive privileges to her own vessels.... It is provided, by the 6th Article of the Confederation, that no compact shall be made between two or more states without the consent of Congress; yet this has been recently violated by Virginia and Maryland, and also by Pennsylvania and New Jersey. North Carolina and Massachusetts have had a considerable body of forces on foot ... notwithstanding the express provision in the Confederation that no force should be kept up by any state in time of peace.

"As to *internal tranquility*... if the rebellion in Massachusetts had been planned and executed with any kind of ability, that state must have been ruined; for Congress was not in a situation to render them any assistance.

"Another object of the federal union is, to promote the *agriculture* and *manufactures* of the states.... Commerce, sir, is the nurse of both.... Our commerce...is unprotected abroad, and without regulation at home, and in this and many of the states ruined by partial and iniquitous laws—laws which, instead of having a tendency to protect property and encourage industry, led to the depreciation of the one, and destroyed every incitement to the other—laws which basely warranted and legalized the payment of just debts by *paper,* which represents nothing, or property of very trivial value."[10]

The issue of collecting taxes was extremely volatile. The Founders took care to devise a tax system that would be acceptable to the people.

No Power to Raise Revenue

C. Davie: "We have suffered... for want of such authority [revenue from imposts and excise taxes] in the federal head. This will be evident if we take a short view of our agriculture, commerce, and manufactures. Our *agriculture* has not been encouraged by the imposition of national duties on rival produce; nor can it be, so long as the several states may make contradictory laws. This has induced our farmers to raise only what they wanted to consume in their own families; I mean, however, after raising enough to pay their own taxes; for I insist that, upon the old plan, the land has borne the burden; for, as Congress could not make law, whereby they could obtain a revenue, in their own way, from *impost* or *excise*, they multiplied their requisition on the several states. When a state was thus called on, it would perhaps impose new duties on its own trade, to procure money for paying its quota of federal demands. This would drive the trade to such neighboring states as made no such new impositions; thus the revenue would be lost with the trade, and the only resort would be a direct tax.

"As to *commerce*, it is well known that the different states now pursue different systems of duties in regard to each other.... Our whole commerce is going to ruin....

"We are independent of each other, but we are slaves to Europe. We have no uniformity in duties, imposts, excises, or prohibitions. Congress has no authority to withhold advantages from foreigners, in order to obtain advantages from them. By the 9th of the old articles, Congress may enter into treaties and alliances under certain provisoes; but Congress cannot pledge that a single state shall not render the whole treaty of commerce a nullity." [11]

Immediate Need for a Stronger Union

R. Livingston: "The British possessions in the limits of this state, held in defiance of the most solemn treaties, and contempt of our government ... were entitled to protection.... The state governments ... neglect or refuse to comply with the requisition, no means were pointed out by the confederation to coerce them.... The old Confederation was defective in its principle, and impeachable in its execution, as it operated upon states in their political capacity, and not upon individuals.... It carried with it the seeds of domestic violence, and tended ultimately to its dissolution.... In the late war... none would be roused to action but those that were near the seat of war....

"The powers...intended to be vested in the federal head, had either been found deficient, or rendered useless by the impossibility of carrying them into execution, on the principle of a league of states totally separate and independent."[12]

United States Too Weak to Be Feared or Respected

S. Adams: "For want of this power [to regulate commerce and form treaties] in our national head, our friends are grieved, and our enemies insult us. Our ambassador at the court of London is considered as a mere cipher, instead of the representative of the United States."[13]

Articles Did Not Allow Majority Rule

Ellsworth: "In republics, it is a fundamental principle that the majority govern, and that the minority comply with the general voice. How contrary, then, to republican principles, how humiliating, is our present situation! A single state can rise up, and put a *veto* upon the most important public measures. We have seen this actually take place. A single state has controlled the general voice of the Union; a minority, a very small minority, has governed us. So far is this from being consistent with republican principles, that it is, in effect, the worst species of monarchy."[14]

No Power to Carry Out Decrees

Wilson: "Do we wish a return of those insurrections and tumults to which a sister state was lately exposed? or a government of such insufficiency as the present is found to be? Let me, sir, mention one circumstance in the recollection of every honorable gentleman who hears me. To the determination of Congress are submitted all disputes between states concerning boundary, jurisdiction or right of soil. In consequence of this power, after much altercation, expense of time, and considerable expense of money, this state was successful enough to obtain a decree in her favor, in a difference then subsisting between her and Connecticut; but what was the consequence? The Congress had no power to carry the decree into execution. Hence the distraction and animosity, which have ever since prevailed, and still continue in that part of the country. Ought the government, then, to remain any longer incomplete? I hope not. No person can be so insensible to the lessons of experience as to desire it."[15]

Disinterested States Ignored Decrees of Congress

Hamilton: "The radical vice in the old Confederation is, that the laws of the Union apply only to states in their corporate capacity.... The states have almost uniformly weighed the requisitions by their own local interests, and have only executed them so far as [have] answered their particular convenience or advantage. Hence there have ever been thirteen different bodies to judge of the measures of Congress, and the operations of government have been distracted by their taking different courses. Those which were to be benefited have complied with the requisitions; others have totally disregarded them."[16]

States Had a Veto on Congress

Parsons: "The Congress, under the Confederation, have ... powers to demand what moneys and forces they judge necessary for the common defence and general welfare.... But it may be said, as the ways and means are reserved to the several states, they have a check upon Congress, by refusing a compliance with the requisitions.... It is this check that has embarrassed at home, and made us contemptible abroad."[17]

States Treating Each Other Like Foreigners

Hamilton: "The interfering and unneighborly regulations of some States, contrary to the true spirit of the Union, have, in different instances, given just cause of umbrage and complaint to others.... We may reasonably expect from the gradual conflicts of State regulations that the citizens of each would at length come to be considered and treated by the others in no better light than that of foreigners and aliens."[18]

Our Ship of State Had Sprung a Leak

Corbin: "A superintending coercive power is absolutely indispensable. This does not exist under the present Articles of Confederation....

"Our state vessel has sprung a leak; we must embark in a new bottom, or sink into perdition."[19]

Confederation Compact No Longer Binding

C. C. Pinckney: "The Confederation was a compact. It was so; but it was a compact that had been repeatedly broken by every state in the Union; and all the writers on the laws of nations agree that, when the parties to treaty violate it, it is no longer binding. This was the case with the old Confederation; it was virtually dissolved, and it became necessary to form a new constitution, to render us secure at home, respectable abroad, and to give us that station among the nations of the world, to which, as free and independent people, we are justly entitled."[20]

Charles Cotesworth Pinckney

Criticism of Rhode Island

Smith: "As for Rhode Island, I do not mean to justify her; she deserves to be condemned. If there were in the world but one example of political depravity, it would be hers; and no nation ever merited, or suffered, a more genuine infamy than a wicked administration has attached to her character."[21]

The United States Were Bankrupt

Johnston: "The United States are bankrupt. They are considered such in every part of the world. They borrow money, and promise to pay. They have it not in their power, and they are obliged to ask of the people, whom they owe, to lend them money to pay the very interest."[22]

Confederation Collapsing Economically

Corbin: "The consequences of deranged finances ... what confusions, disorders, and even revolutions, have resulted from this cause, in many nations! ...

"The debts due by the United States and how much is due to foreign nations! No part of the principal is paid to those nations; nor has even the interest been paid as honorably and punctually as it ought. Nay, we were obliged to borrow money last year to pay the interest. What! borrow money to discharge the interest of what was borrowed, and continually

For a time, New York City was the capital of the United States.

augment the amount of the public debt! Such a plan would destroy the richest country on earth."[23]

Failure of States to Support Congress

Hamilton: "New Hampshire, which has not suffered at all, is totally delinquent. North Carolina is totally delinquent. Many others have contributed in a very small proportion. And Pennsylvania and New York are the only states which have perfectly discharged their federal duty."[24]

Consequences of a Helpless Congress

Wilson: "Suppose we reject this [new] system of government; what will be the consequence? Let the farmer say, he whose produce remains unasked for; nor can he find a single market for its consumption, though his fields are blessed with luxuriant abundance. Let the manufacturer, and let the mechanic, say; they can feel, and tell their feelings. Go along the wharves of Philadelphia, and observe the melancholy silence that reigns.

"I appeal not to those who enjoy places and abundance under the present government; they may well dilate upon the easy and happy situation of our country. Let the merchants tell you what is our commerce; let them say what has been their situation since the return of peace — an era which they might have expected would furnish additional sources to our trade, and a continuance, and even an increase, to their fortunes. Have these ideas been realized? or do they not lose some of their capital in every adventure, and continue the unprofitable trade from year to year, subsisting under the hopes of happier times under an efficient general government? The ungainful trade carried on by our merchants has a baneful influence on the interests of the manufacturer, the mechanic, and the farmer; and these, I believe, are the chief interests of the people of the United States.

"I will go further. Is there now a government among us that can do a single act that a national government ought to do? Is there any power of the United States that can *command* a single shilling? This is a plain and a homey question.

"Congress may recommend; they can do no more: they may require; but they must not proceed one step further. If things are bad now, — and that they are not worse is only owing to hopes of improvement or change in the system, — will they become better when those hopes are disappointed?"[25]

Spirit of Profligacy Engulfing the People

Williams: "Unhappily for us, immediately after our extrication from a cruel and unnatural war, luxury and dissipation overran the country, banishing all that economy, frugality, and industry, which had been exhibited during the war.

"Sir, if we were to reassume all our old habits, we might expect to prosper. Let us, then, abandon all those foreign commodities which have hitherto deluged our country, which have loaded us with debt, and which, if continued, will forever involve us in difficulties. How many thousands are daily wearing the manufactures of Europe, when, by a little industry and frugality, they might wear those of their own country! One may venture to say, sir, that the greatest part of the goods are manufactured in Europe by persons who support themselves by our extravagance. And can we believe a government ever so well formed can relieve us from these evils?

"What dissipation is there from the immoderate use of spirits! Is it not notorious that men cannot be hired, in time of harvest, without giving them, on an average, a pint of rum per day? so that, on the lowest calculation, every twentieth part of the grain is expended on that particle; and so, in proportion, all the farmer's produce.

John Williams decried the general spirit of profligacy among Americans, including immoderate use of liquor.

"And what is worse, the disposition of eight-tenths of the commonalty is such, that, if they can get credit, they will purchase unnecessary articles, even to the amount of their crop, before it becomes merchantable. And therefore it is evident that the best government ever devised, without economy and frugality, will leave us in a situation no better than the present."[26]

Enfeebled United States Exposed to Danger

Madison: "Should a war be the result of the precarious situation of European affairs, and all the unruly passions attending it be let loose on the ocean, our escape from insults and depredations, not only on that element, but every part of the other bordering on it, will be truly miraculous. In the present condition of America, the States more immediately exposed to these calamities have nothing to hope from the phantom of a general government which now exists; and if their single resources were equal to the task of fortifying themselves against the danger, the object to be protected would be almost consumed by the means of protecting them."[27]

Political Dissolution Approaching

Ames: "Who is there, that really loves liberty, that will not tremble for its safety, if the federal government should be dissolved. Can liberty be safe without government?

"The period of our political dissolution is approaching. Anarchy and uncertainty attend our future state. But this we know — that Liberty, which is the soul of our existence, once fled, can return no more.

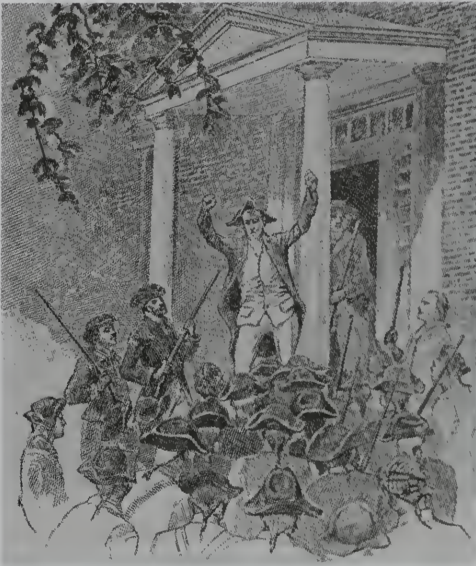
"The Union is essential to our being as a nation. The pillars that prop it are crumbling to powder. The Union is the vital

"If we reject the Constitution . . . we girdle the tree, its leaves will wither, its branches drop off . . ."

sap that nourishes the tree. If we reject the Constitution, — to use the language of the country, — we girdle the tree, its leaves will wither, its branches drop off, and the mouldering trunk will be torn down by the tempest. What security has this single state against foreign enemies? Could we defend the vast country, which the Britons so much desire? Can we protect our fisheries, or secure by treaties a sale for the produce of our lands in foreign markets? Is there no loss, no danger, by delay? In spite of our negligence and perverseness, are we to enjoy, at all times, the privilege of forming a constitution, which no other nation has ever enjoyed at all? We approve our own form of state government, and seem to think ourselves in safety under its protection. We talk as if there was no danger in deciding wrong. But when the inundation comes, shall we stand on dry land? The state government is a beautiful structure. It is situated, however, upon the naked beach. The Union is the dike to fence out the flood. That dike is broken and decayed; and, if we do not repair it, when the next spring tide comes, we shall be buried in one common destruction."[28]

Massachusetts Cheated, Hopes Blasted

Thacher: "At the conclusion of the late war, two-thirds of the Continental army were from Massachusetts; their provision and their clothing proceeded, also, in a great measure, from our extraordinary exertions. The people did this in the fullest confidence, that, when peace and tranquillity were restored, from the honor and justice of our sister states our supernumerary expenses would be abundantly repaid. But, alas! how much hath our expectation been blasted! The Congress, though willing, yet had no power to do us justice. The small district of Rhode Island put a negative upon the collected wisdom of the continent. . . . On the one hand, the haughty Spaniard has deprived us of the navigation of the River Mississippi; on the other, the British nation are, by extravagant duties, ruining our fishery. Our sailors are enslaved by the pirates of Algiers. Our credit is reduced to so low an ebb, that American faith is a proverbial expression for perfidy, as Punic faith was among the Romans."[29]



Shays's Rebellion underscored the weakness of the Articles of Confederation.

Potential Attack by Former Americans

Dana: "If disunited, the time may come when we may be attacked by our natural enemies. Nova Scotia and New Brunswick, filled with tories and refugees, stand ready to attack and devour these states, one by one. This will be the case, if we have no power to draw forth the wealth and strength of the whole, for a defence of a part."[30]

Potential Attack by Covetous Europeans

C. Pinckney: "It must be obvious that, without a superintending government, it is impossible the liberties of this country can long be secured.

"Single and unconnected, how weak and contemptible are the largest of our states!—how unable to protect themselves from external or domestic insult! How incompetent to national purposes would even partial union be!—how liable to intestine wars and confusion!—how little able to secure the blessings of peace!

"Let us, therefore, be careful in strengthening the Union. Let us remember that we are bounded by vigilant and attentive neighbors, who view with a jealous eye our rise to empire."[31]

Shays's Rebellion Merely Symptomatic

Wilson: "When the commotions existed in Massachusetts, they gave orders for enlisting an additional body of two thousand men. I believe it is not generally known on what a perilous tenure we held our freedom and independence at that period. The flames of internal insurrection were ready to burst out in every quarter; they were formed by the correspondents of state officers, (to whom an allusion was made on a former day,) and from one end to the other of the continent, we walked on ashes, concealing fire beneath our feet."[32]

Weakness Had Precipitated Moral Decay

Ellsworth: "How have the morals of the people been depraved for the want of an efficient government, which might establish justice and righteousness! For the want of this, iniquity has come in upon us like an overflowing flood."[33]

Lawlessness in All the States

Thacher: "During the session of the late Convention, Massachusetts was on the point of civil war. In Vermont and New Hampshire, a great disaffection to their several governments prevailed among the people. New York absolutely refused complying with the requisitions of Congress. In Virginia, armed men endeavored to stop the courts of justice. In South Carolina, creditors, by law, were obliged to

receive barren and useless land for contracts made in silver and gold. I pass over the instance of Rhode Island: their conduct was notorious. In some states, laws were made directly against the treaty of peace; in others, statutes were enacted which clashed directly against any federal union—new lands sufficient to discharge a great part of the Continental debt intruded upon by needy adventurers — our frontier settlements exposed to the ravages of the Indians — while the several states were unable or unwilling to relieve their distress."[34]

Good Neighbors Were Becoming Enemies

Smith: "Mr. President, I am a plain man, and get my living by the plough. I am not used to speak in public, but I beg your leave to say a few words to my brother plough-joggers in this house. I have lived in a part of the country where I have known the worth of good government by the want of it. There was a black cloud that rose in the east last winter, and spread over the west.... I mean, sir, the county of Bristol; the cloud rose there, and burst upon us, and produced a dreadful effect. It brought on a state of anarchy, and that led to tyranny. I say, it brought anarchy. People that used to live peaceably, and were before good neighbors, got distracted, and took up arms against government.... I am going, Mr. President, to show you, my brother farmers, what were the effects of anarchy, that you may see the reasons why I wish for good government. People, I say, took up arms; and then, if you went to speak to them, you had the musket of death presented to your breast.

"They would rob you of your property; threaten to burn your houses; oblige you to be on your guard night and day; alarms spread from town to town; families were broken up; the tender mother would cry, 'O, my son is among them! What shall I do for my child!' Some were taken captive, children taken out of their schools, and carried away. Then we should hear of an action, and the poor prisoners were set in the front, to be killed by their own friends.

"How dreadful, how distressing was this! Our distress was so great that we should have been glad to snatch at any thing that looked like a government. Had any person, that was able to protect us, come and set up his standard, we should all have flocked to it, even if it had been a monarch; and that monarch might have proved a tyrant; — so that you see that anarchy leads to tyranny, and better have one tyrant than so many at once."[35]

Without a Constitution Despotism Loomed

G. Morris: "Something has been said of the danger of monarchy. If a good government should not now be formed, if a good organization of the executive should not be provided, he doubted whether we should not have something worse than a limited monarchy."[36]

New Constitution Must Be Obtained Soon

Turner: "A constitution preferable to the Confederation must be obtained, and obtained soon, or we shall be an undone people.... When, in connection with this confidence, I consider the deplorable state of our navigation and commerce, and various branches of business thereon dependent; the inglorious and provoking figure we make in the eyes of our European creditors; the degree in which the landed interest is burdened and depreciated; the tendency of depreciating paper and tend-

er acts to destroy mutual confidence, faith, and credit, to prevent the circulation of specie, and to overspread the land with an inundation, a chaos of multiform injustice, oppression, and knavery; when I consider what want of efficiency there is in our government, as to obliging people seasonably to pay their dues to the public, instead of spending their money in support of luxury and extravagance, of consequence the inability of government to satisfy the just demands of its creditors, and to do it in season, so as to prevent their suffering amazingly by depreciation; in connection with my anxious desire that my ears may be no longer perstringed, nor my heart pained, with the cries of the injured widow and orphans; when I also consider that state of our finances which daily exposes us to become a prey to the despotic humor even of an impotent invader, I find myself constrained to say, before this assembly, and before God, that I think it my duty to give my vote in favor of this Constitution."[37]

Circumstances Favorable to Forming a New System

Tweed: "We very much stand in need of a reform of government, as the very sinews of our present constitution are relaxed....

"Allow me to ask if history furnishes us with a single instance of any nation, state, or people, who had it more in their power than we at present have to frame for ourselves a perfect, permanent, free, and happy constitution."[38]

Need for a Constitution to Provide a Strong Union

Ellsworth: "A union is necessary for the purposes of a national defence. United, we are strong; divided, we are weak. It is easy for hostile nations to sweep off a number of separate states, one after another....

"A union ... is likewise necessary, considered with relation to economy. Small states have enemies, as well as great ones. They must provide for their defence. The expense of it, which would be moderate for a large kingdom, would be intolerable to a petty state....

"We must unite, in order to preserve peace among ourselves. If we be divided, what is to prevent wars from breaking out among the states? States, as well as individuals, are subject to ambition, to avarice, to those jarring passions which disturb the peace of society. What is to check these? If there be a parental hand over the whole, this, and nothing else, can restrain the unruly conduct of the members.

"Union is necessary to preserve commutative justice between the states. If divided, what is to prevent the large states from oppressing the small?

"A more energetic system is necessary. The present is merely advisory. It has no coercive power. Without this, government is ineffectual, or rather is no government at all....

"But to come nearer home. Mr. President, have we not seen and felt the necessity of such a coercive power? What was the consequence of the want of it during the late war, particularly towards the close? A few states bore the burden of the war. While we and one or two more of the states were paying eighty or a hundred dollars per man to recruit the Continental army, the regiments of some states had scarcely men enough to wait on their officers. Since the close of the war, some of the states have done nothing towards complying with the requisitions of Congress. Others, who did something at first, seeing that they were left to bear the whole burden, have become equally

remiss. What is the consequence? To what shifts have we been driven? To the wretched expedient of negotiating new loans in Europe, to pay the interest of the foreign debt. And what is still worse, we have even been obliged to apply the new loans to the support of our own civil government at home.

"Another ill consequence of this want of energy is, that treaties are not performed. The treaty of peace with Great Britain was a very favorable one for us. But it did not happen perfectly to please some of the states, and they would not comply with it. The consequence is, Britain charges us with the breach, and refuses to deliver up the forts on our northern quarter....

"If we go on as we have done, what is to become of the foreign debt? Will sovereign nations forgive us this debt, because we neglect to pay? or will they levy it by reprisals, as the laws of nations authorize them? Will our weakness induce Spain to relinquish the exclusive navigation of the Mississippi, or the territory which she claims on the east side of that river? Will our weakness induce the British to give up the northern posts? If a war breaks out, and our situation invites our enemies to make war, how are we to defend ourselves? Has government the means to enlist a man or buy an ox? Or shall we rally the remainder of our old army? The European nations I believe to be not friendly to us. They were pleased to see us disconnected from Great Britain; they are pleased to see us disunited among ourselves. If we continue so, how easy it is for them to canton us out among them, as they did the kingdom of Poland! But supposing this is not done, if we suffer the union to expire, the least that may be expected is, that the European powers will form alliances, some with one state and some with another, and play the states off one against another, and that we shall be involved in all the labyrinths of European politics."[39]

---

1. Alfred H. Kelly and Winfred A. Harbison, *The American Constitution: Its Origins and Development*, 3d ed. (New York: W.W. Norton and Co., 1963), p. 111.
2. Flexner, *George Washington in the American Revolution, 1775–1783*, pp. 492–93.
3. Clarence B. Carson, *The Rebirth of Liberty: The Founding of the American Republic, 1760–1800* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1976), p. 135.
4. Quoted by Albert S. Bolles, *The Financial History of the United States* (1896), p. 139.
5. Fitzpatrick, *The Writings of George Washington*, 29:51–52.
6. Ibid., p. 122.
7. Ibid., p. 153.
8. *Federalist Papers*, No. 15.
9. Ibid., No. 21.
10. Elliot, 4:16–20.
11. Elliot, 2:57–59.
12. Ibid., pp. 210–15.
13. Ibid., p. 124.
14. Ibid., p. 197.
15. Ibid., p. 462.
16. Ibid., pp. 231, 233–34.
17. Ibid., pp. 89–90.
18. *Federalist Papers*, No. 22.
19. Elliot, 3:106.
20. Ibid., 4:308.
21. Ibid., 2:335.
22. Ibid., 4:89.
23. Ibid., 3:105.
24. Ibid., 2:232.
25. Ibid., 3:524–25.
26. Ibid., 2:240–41.
27. *Federalist Papers*, No. 41.
28. Elliot, 2:158–59.
29. Ibid., pp. 144–45.
30. Ibid., p. 43.
31. Ibid., 4:331.
32. Ibid., 2:521.
33. Ibid., p. 197.
34. Ibid., p. 144.
35. Ibid., pp. 102–3.
36. James Madison, *The Debates in the Federal Convention of 1787 Which Framed the Constitution of the United States of America*, ed. Gaillard Hunt and James Brown Scott (New York: Oxford University Press, 1920), p. 316. Hereafter cited as Madison.
37. Elliot, 2:170–71.
38. Ibid., 4:333.
39. Ibid., 2:185–86, 188–90.

CHAPTER

THE MIRACLE AT PHILADELPHIA

What the Constitutional Convention produced in 1787 has been sometimes referred to as a "miracle." But it was just as much of a miracle that the Convention was ever held.

With all of the problems we have already enumerated, it is logical to suppose that the calling of a new convention would have been the most popular and urgent proposal any politician could have made. But such was not the case. In fact, it was just the opposite. Both the states and the Congress resisted the calling of a constitutional convention.

During the Revolutionary War, Washington and his aide, Alexander Hamilton, wrote correspondence both to the states and to Congress urging them to take the required steps to strengthen the central government before it was too late. The only action by the

Mount Vernon, George Washington's home.

Congress was to propose several amendments to the Articles of Confederation. But each of these amendments required approval by all thirteen states in order to pass. Each time at least one state objected, which amounted to a unilateral veto on the desires of the other twelve. What the country needed was a completely new structure of government.

In 1782, Alexander Hamilton succeeded in getting his own state of New York to pass a resolution calling for a constitutional convention, but no other state would support it.

In 1783, Hamilton was elected to Congress. He immediately campaigned for a constitutional convention, but the rest of Congress ignored him.

When Washington discovered that some of his officers were planning to abandon the Articles and set up a monarchy with Washington as ruler, he vehemently denounced the plot and sent a letter to every state in the Union pleading with them to call a convention as soon as possible. Nothing happened.

Finally Washington could endure it no longer. He decided to start at the bottom and work up. His own state of Virginia was quarreling bitterly with Maryland over fishing rights in the Potomac and in Chesapeake Bay. Washington therefore took the initiative on March 28, 1785, to invite these two states to send delegates to meet with him at Mount Vernon and sip a little something on the back porch while they worked out their problems. The results were spectacular. A compact was written and ratified by both states. Maryland was so pleased with the new cordial relations that her legislature recommended that Virginia, as the largest state in the Union, take the initiative to propose to Congress that all the states be called to a trade conference so they could work out their mutual problems at the same time.

The Trade Conference at Annapolis

The trade conference met at Annapolis during September 1786, but delegates were sent from only five states. Two of its youngest members, Alexander Hamilton and James Madison, took the lead in persuading the delegates that nothing could be accomplished without a quorum. It was agreed that they should unitedly campaign for a constitutional convention and settle their political differences as well as their trade problems. Hamilton therefore drafted a report to the Congress proposing that all thirteen states choose delegates to meet in a special convention "to devise such further provisions as shall appear to them necessary to render the constitution of the federal government [the Articles of Confederation] adequate to the exigencies of the Union."[1]

Congress dallied. In fact, it had been suffering from such an inferiority complex that there was seldom a quorum present to do business. Finally, on February 21, 1787, the Congress officially extended an invitation to the several states to send special delegates to Philadelphia on May 14, just four months later. Congress said the convention was "for the sole and express purpose of revising the Articles of Confederation," thereby rendering "the federal constitution adequate to the exigencies of government, and the preservation of the Union."

Little did the Congress suspect that before it was through, this convocation of delegates would come up with a whole new system of government under a completely unique constitution.

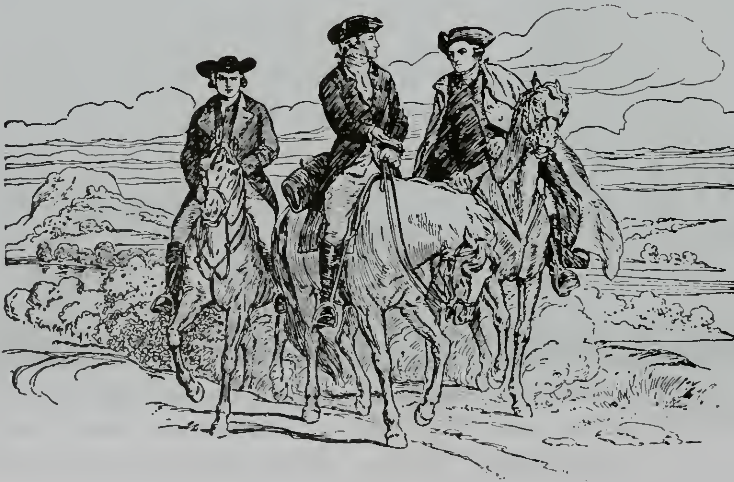
When delegates from five states met at the Annapolis trade conference in 1786, they asked Congress to call a general convention to revise the Articles of Confederation.

Calling the Constitutional Convention

It was fortunate indeed that each of the states sent some of its most outstanding leaders to the convention. Only Rhode Island failed to send any delegates. The political leaders of that state wanted to remain completely independent of the other states and certainly had no intention of consenting to a stronger central government. The other states began calling this maverick sister state "Rogue Island." Thirteen businessmen from Rhode Island sent a letter to the convention apologizing for the behavior of their obstreperous leaders.

One of the surprising things connected with the convention was the fact that George Washington, who had pleaded for a convention so long, almost did not attend himself. His brother had just died, his mother and sister were seriously ill, and he was in such pain from rheumatism that he could scarcely sleep at night. Furthermore, the fraternity of military officers called the Society of the Cincinnati had wanted to honor Washington at their convention in Philadelphia during this same period. He had declined because of his personal circumstances, and now it would be embarrassing to suddenly show up for another convention. Nevertheless, the general decided to bite the bullet and go. James Madison and others pointed out that because of his position in the public mind as the most trusted leader in the nation, it would appear that he had lost confidence in the Congress and perhaps in republican principles if he did not attend. Although he had been carrying one arm in a sling because of rheumatic pain, he left Mount Vernon at sunrise on May 9 and arrived in Philadelphia the day before the delegates were to convene on May 14.

As it turned out, he need not have hurried. Virginia and Pennsylvania were the only two states with a quorum of delegates on hand for the opening session. This meant they had to wait for other delegates to arrive. Altogether 73 delegates had been appointed by the states, but in the end only 55 actually participated. Many of the states had not provided for any travel or expense money, and this accounted for most of the absenteeism. In fact, many of those who did come, includ-



George Washington and companions ride to Philadelphia for the Constitutional Convention.

ing James Madison, had to borrow money for living expenses before the convention was over.

Two men who made some of the greatest contributions to the constitutional precepts of the day were unable to attend. One of them was John Adams, who was serving as the American minister to England. Nevertheless, he had written a treatise entitled *A Defense of the Constitutions of Government of the United States,* and that document had been widely read by delegates to the Constitutional Convention.

The other intellectual leader was Thomas Jefferson. He was absent serving as the American minister to France. However, he had sent over a hundred carefully selected books to James Madison and George Wythe, the best reference works available. Madison made himself a walking encyclopedia on the history and political philosophy of governments of the past, and Jefferson corresponded with him on what he considered to be the essential elements of a good constitution.

A month before the Convention, Madison wrote a summary of the weaknesses of the Articles of Confederation entitled "The Vices of the Political System of the United States." He then outlined the kind of constitution which he thought would remedy the situation. No one came to the Convention better prepared for the task at hand than James Madison.

In terms of experience and professional training, the 55 delegates represented a cross-section of the most capable men in the country.

- Two were college presidents (William S. Johnson and Abraham Baldwin).
- Three were or had been college professors (George Wythe, James Wilson, and William C. Houston).
- Four had studied law in England.
- Thirty-one were members of the legal profession, several of them being judges.
- Nine had been born in foreign countries and knew the oppressions of Europe from firsthand experience.
- Twenty-eight had served in Congress, and most of the rest had served in state legislatures.
- Nineteen or more had served in the army, 17 as officers, and 4 on Washington's staff.

Dr. Samuel Eliot Morison of Harvard writes:

"Practically every American who had useful ideas on political science was there except John Adams and Thomas Jefferson, on foreign missions, and John Jay, busy with the foreign relations of the Confederation. Jefferson contributed indirectly by shipping to Madison and Wythe from Paris sets of Polybius and other ancient publicists who discoursed on the theory of 'mixed government' on which the Constitution was based. The political literature of Greece and Rome was a positive and quickening influence on the Convention debates."[2]

A distinctive quality of this convention was the youthfulness of most of its participants. The average age was about 41.

- Five (including Charles Pinckney) were under 30.
- One (Alexander Hamilton) was 32.
- Three (James Madison, Gouverneur Morris, and Edmund Randolph) were within a year of being 35.
- Three (Washington, John Dickinson, and George Wythe) were 55.
- Only four members had passed 60, and Benjamin Franklin, at 81, was the oldest member by a gap of 15 years.

The Principal Personalities at the Constitutional Convention

In addition to **George Washington,** the following notable personalities were participants in the framing of the Constitution:

Benjamin Franklin (1706–90), born on January 17, 1706, spent the first seventeen years of his life in Boston, Massachusetts. In these early years he gained valuable experience in the printing trade before the violent temper of his older half-brother impelled him to strike out on his own. He then moved to Philadelphia, Pennsylvania, the largest city in colonial America, where he eventually established himself as a successful printer and publisher. In 1730 he married Miss Deborah Read, whom he had met soon after his first arrival in Philadelphia. By 1732 Franklin began issuing his famous *Poor Richard's Almanack,* which was read widely throughout the American colonies. The revenues from this and other profitable ventures enabled him to retire from active business at age 41 and to devote the remainder of his life to scientific investigations and public service.

Although he had completed only two years of formal schooling in his youth, Franklin's scholarly achievements brought him international renown during his lifetime. He taught himself five foreign languages and amassed the largest private library in America. He founded and served for many years as president of the American Philosophical Society, and developed theories on such diverse phenomena as sunspots, magnetism, earthquakes, the causes of the common cold, and continental drift. He wrote the first scientific description of the Atlantic Gulf Stream and helped organize the first American expedition to the Arctic.

Benjamin Franklin

Among his many inventions were the Pennsylvania Fireplace (later called the "Franklin Stove"), the lightning rod, bifocal eyeglasses, the flexible catheter, daylight savings time, and an unusual musical instrument called the "armonica."

Perhaps Franklin's greatest scientific achievements were in the field of electricity. He produced the first coherent theory of electricity, that of a "single fluid" in positive and negative states. Generations of American schoolchildren have heard the story of his famous kite experiment outside Philadelphia in 1752, which proved that lightning and electricity were identical.

Eighteenth-century scholars regarded Franklin as "the Newton of their age." His scientific and scholarly writings were translated and published widely in various editions, and he was awarded honorary degrees by universities in several

nations (this is how he became known as "Doctor Franklin"). He was also an active member of learned societies throughout the Western world.

As great as were his scholarly achievements, Benjamin Franklin is remembered primarily for his contributions to public life and to the establishment of free government in early America. From early adulthood he initiated numerous public improvements, including the University of Pennsylvania, the first subscription library in North America, police and fire protection in Philadelphia, and America's first fire insurance company.

Franklin's public concerns and responsibilities gradually expanded to include all of the American colonies. After serving in the Pennsylvania Assembly for several years, he was appointed Deputy Postmaster General of North America in 1753. The following year he advocated a plan to unite the colonies to provide for a stronger defense during the French and Indian War. In 1757 he was sent to England to secure certain colonial rights through negotiations with British officials. After a five-year fight he returned home successful, but in 1764 he was back in England to seek further redress from the Crown. His original grievances were soon overshadowed, however, by ominous new developments. One of these was the infamous Stamp Act, whose repeal he helped bring about in early 1766.

As Anglo-American relations deteriorated over the next decade, Franklin gradually emerged as the spokesman for all America. He remained in London for a total of eleven years this time, seeking reconciliation between the colonies and the mother country. Realizing that his efforts were increasingly futile, he fled England in March of 1775—and none too soon. While he was crossing the Atlantic, fighting erupted at Lexington and Concord; "the shot heard round the world" had now ignited the Revolutionary War.

After fulfilling a wide range of duties in the Continental Congress, including service on the committee which prepared the Declaration of Independence, Franklin was appointed in September 1776 to head a delegation to Paris seeking French aid to keep the war effort alive. He was received with open arms by the people of France, who viewed him as the great philosopher and patriot of the age, but the French government remained cautious. American successes on the battlefield and Franklin's skillful diplomacy swayed their thinking, however, and in early 1778 a treaty of alliance between the two nations was signed. Franklin remained in Paris to seek additional financial support; by 1782 he had obtained eighteen million livres' worth of loans for the American cause.

In August 1781, Franklin was asked to lead the commission assigned to negotiate peace with Great Britain. After long and arduous effort, the treaty was signed in Paris on September 3, 1783, ending the Revolutionary War and assuring the independence of the United States. This treaty, whose provisions were clearly advantageous to the new nation, has been called "the greatest achievement in the history of American diplomacy."

Upon returning home in the fall of 1785, Franklin was almost immediately elected as president (i.e., governor) of the state of Pennsylvania, a position in which he served for three years. Thus he was the host for the federal convention which met in Philadelphia through the summer of 1787 to draft a new constitution for the American people. As the oldest delegate to the convention (he was now age 81), Franklin played an important role at a

critical moment in the nation's history. Because of the severe pain caused by his gout and a large bladder stone, he often had to be carried into the meeting place at Independence Hall; nevertheless he attended sessions daily and participated actively in committees and debates. His conciliatory influence helped to pull the convention through several tense moments, and to ensure the passage of the Constitution by "unanimous consent of the states present." During the ratification struggle which followed, Franklin's excellent reputation made his endorsement of the new Constitution a significant factor in its acceptance by the people of the United States.

Franklin was the only one of the Founding Fathers to enscribe his signature on all four of the vital documents which gave birth to the first free people in modern times: the Declaration of Independence, the treaty of alliance with France, the peace treaty with England, and the Constitution of the United States. Known as the "Sage of Philadelphia," he was almost universally loved and venerated among his countrymen. Many Americans expected him to become the first Vice President in the new federal government, but he replied to all such inquiries that he was now too old and infirm to continue in public life.

In 1787 Franklin began serving as president of the Pennsylvania Abolition Society. Three years later, just weeks before his death, he issued his last public appeal—a memorial to Congress calling for an end to human slavery. Although the endeavor was unsuccessful, many believed that it helped fulfill his wish that his life might "finish handsomely." On April 17, 1790, at the age of 84, he died peacefully at his home in Philadelphia.

James Madison

James Madison (1751–1836) was the eldest son of a Virginia planter who had a large plantation now known as Montpelier in Orange County, Virginia. Madison's educational advantages were excellent, both in depth and in breadth. He entered Princeton in 1769 and came under the discipline of its president, the Reverend John Witherspoon, who primed the scholarly mind of Madison much as George Wythe had done to Jefferson. Unfortunately, however, he was frail in health, and the long and intensive studies left their mark. In addition to the usual classics of Greek and Latin, Madison spent a year studying Hebrew in order to better understand the Old Testament. For a while he seriously considered the possibility of entering the ministry, but changed his mind and began preparing for the legal profession and public life.

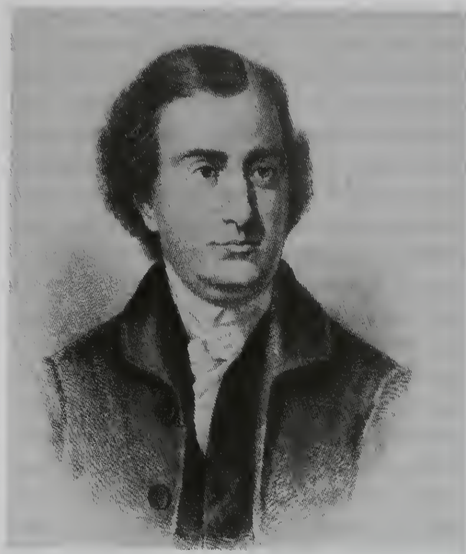
By this time, the conflict with England began to loom large on the horizon and Madison applied for membership in the state militia. However, he was rejected because of his physical disabilities and therefore took no active part in the Revolutionary War. Nevertheless, in 1774 he

was appointed a member of the Committee of Public Safety for Orange County, and in 1776 he was elected a delegate to the convention which framed the constitution of Virginia. He succeeded in providing a clause in the Virginia Bill of Rights guaranteeing the "free exercise of religion."

Jefferson considered James Madison and James Monroe the two young intellectuals who had the greatest promise in promoting the principles of the new American republic. Probably no Virginian was more helpful to Jefferson in getting his reforms of the civil and criminal law implemented than James Madison.

While still under 30, he was chosen as a delegate to the Continental Congress, and gained the reputation of being the most able political leader in attendance at that time. He opposed the issuance of paper money by the states, argued mightily for the right of Congress to tax imports, and supported the right of the states to navigate the Mississippi. He argued for a stronger central government that could enforce its decrees and raise the funds to maintain itself. Because a delegate could serve only one term, he returned to Virginia in 1784 and was immediately elected to the state assembly. With Washington's support, he succeeded in arranging a conference between Virginia and Maryland to settle disputes over fishing rights and ports of entry. This led to the Annapolis Convention in 1786. Thereafter Madison joined with Hamilton to get Congress to authorize the Constitutional Convention in 1787.

Edmund Randolph (1753–1813). "Born on the 10th of August 1753, at Tazewell Hall, Williamsburg, Virginia, the family seat of his grandfather, Sir John Randolph (1693–1737), and his father, John Randolph (1727–84), who (like his uncle

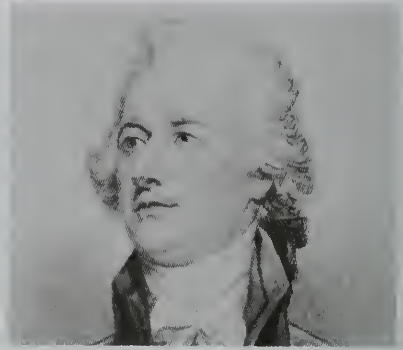


Edmund Randolph

Peyton Randolph) were king's attorneys for Virginia. Edmund graduated at the College of William and Mary, and studied law with his father, who felt bound by his oath to the king and went to England in 1775. In August–October 1775 Edmund was aide-de-camp to General Washington. In 1776 he was a member of the Virginia Convention, and was on its committee to draft a constitution. In the same year he became the first attorney-general of the state (serving until 1786). He served in the Continental Congress in 1779 and again in 1780–82. He had a large private practice, including much legal business for General Washington. In 1786 he was a delegate to the 'Annapolis convention,' and in 1787–88 was governor of Virginia. He was a delegate to the Constitutional Convention of 1787, and on the 29th of May presented the 'Virginia plan (sometimes called the 'Randolph plan'). The plan was not drafted by Randolph, but he presented it because he was governor. In the Convention Randolph advocated a strongly centralized government,

the prohibition of the importation of slaves, and a plural executive, suggesting that there should be three executives from different parts of the country. [In the end, he] refused to sign the Constitution because [there was no Bill of Rights and] too much power over commerce was granted to a mere majority in Congress.... In October 1787 he published an attack on the Constitution; but in the Virginia convention he [learned a Bill of Rights had been promised and therefore] urged its ratification.... In 1788 he refused re-election as governor, and entered the House of Delegates to work on the revision and codification of the state laws (published in 1794). In September 1789 he was appointed by President Washington first attorney-general of the United States."[3]

Alexander Hamilton (1757–1804). "Was born as a British subject on the island of Nevis in the West Indies on the 11th of January 1757. He came of good family on both sides. His father, James Hamilton, a Scottish merchant of St. Christopher, was a younger son of Alexander Hamilton of Grange, Lanarkshire, by Elizabeth, daughter of Sir R. Pollock. His mother, Rachael Fawcett (Faucette), of French Huguenot descent, married when very young a Danish proprietor of St. Croix, John Michael Levine, with whom she lived unhappily and whom she soon left, subsequently living with James Hamilton; her husband procured a divorce in 1750, but the court forbade her remarriage. Such unions as hers with James Hamilton were ... not uncommon in the West Indies. By her, James Hamilton had two sons, Alexander and James. Business misfortunes having caused his father's bankruptcy, and his mother dying in 1768, young Hamilton was thrown upon the care of maternal relatives at St. Croix, where, in his twelfth year, he entered the countinghouse of Nicholas Cruger. Shortly afterward Mr. Cruger, going abroad, left the boy in charge of the business. The extraordinary specimens we possess of his mercantile correspondence and friendly letters, written at this time, attest an astonishing poise and maturity of mind, and self-conscious ambition. His opportunities for regular schooling must have been very scant, but he had cultivated friends who discerned his talents and encouraged their development, and he early formed the habits of wide reading and industrious study that were to persist through his life. An accomplishment later of great service to Hamilton ... was a familiar command of French. In 1772 some friends, impressed by a description by him of the terrible West Indian hurricane in that year, made it possible for him to go to New York to complete his education. Arriving in the autumn of 1772, he prepared for college at Elizabethtown, N.J., and in 1774 entered King's College (now Columbia University) in New York City. His studies, however, were interrupted by the War of American Independence.

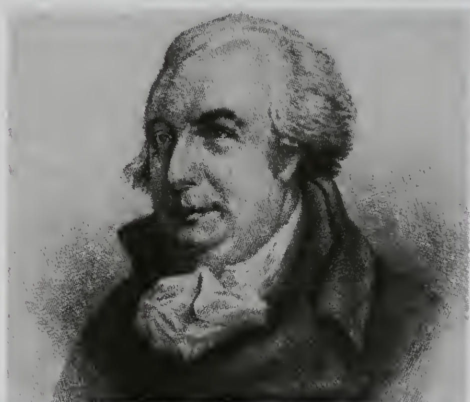

Alexander Hamilton

"A visit to Boston seems to have thoroughly confirmed the conclusion, to which reason had already led him, that he should cast in his fortunes with the colonists. Into their cause he threw himself with ardour.... He organized an artillery

company, was awarded its captaincy on examination, won the interest of Nathanael Greene and Washington by the proficiency and bravery he displayed in the campaign of 1776 around New York City, joined Washington's staff in March 1777 with the rank of lieutenant-colonel, and during four years served as his private secretary and confidential aide. The important duties with which he was entrusted attest Washington's entire confidence in his abilities and character.... But Hamilton was ambitious for military glory—it was an ambition he never lost; he became impatient of detention in what he regarded as a position of unpleasant dependence, and (Feb. 1781) he seized a slight reprimand administered by Washington as an excuse for abandoning his staff position. Later he secured a field command, through Washington, and won laurels at Yorktown, where he led the American column in the final assault on the British works. In 1780 he married Elizabeth, daughter of General Philip Schuyler, and thus became allied with one of the most distinguished families in New York.

"Meanwhile, he had begun the political efforts upon which his fame principally rests. In letters of 1779–1780 he correctly diagnoses the ills of the Confederation, and suggests with admirable prescience the necessity of centralization in its governmental powers; he was, indeed, one of the first, if not to conceive, at least to suggest adequate checks on the anarchic tendencies of the time. After a year's service in Congress in 1782–1783, in which he experienced the futility of endeavouring to attain through that decrepit body the ends he sought, he settled down to legal practice in New York. The call for the Annapolis Convention (1786) was Hamilton's opportunity. A delegate from New York, he supported Madison in inducing the Federal Convention of 1787 at Philadelphia (himself drafting the call); he secured a place on the New York delegation; and, when his anti-Federal colleagues withdrew from the Convention, he signed the Constitution for his state. So long as his colleagues were present his own vote was useless, and he absented himself for some time from the debates after making one remarkable speech (June 18th, 1787). In this he held up the British government as the best model in the world. Though fully conscious that monarchy in America was impossible, he wished to obtain the next best solution in an aristocratic, strongly centralized, coercive, but representative union, with devices to give weight to the influence of class and property. His plan had no chance of success; but though unable to obtain what he wished, he used his great talents to secure the adoption of the Constitution.

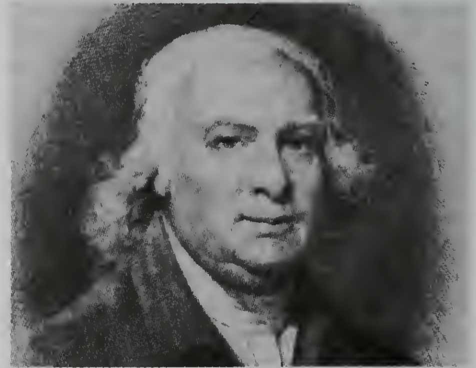
"To this struggle was due the greatest of his writings, and the greatest individual contribution to the adoption of the new government, *The Federalist*, which remains a classic commentary on American constitutional law and the principles of government."[4]



Gouverneur Morris

Gouverneur Morris (1752–1816). Born in Morrisania, N.Y., and "graduated in 1768

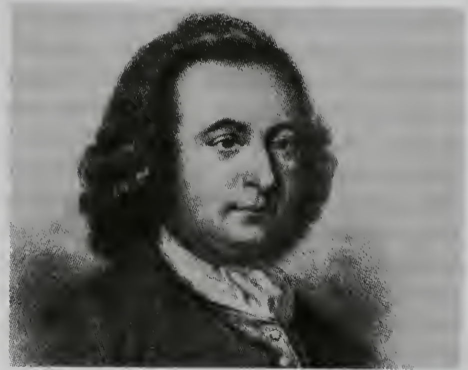
from King's College (now Columbia University); after study of the law was licensed in 1771 to practice as an attorney; did excellently well at the bar; and during the earlier difficulties between Great Britain and the American colonies maintained a conservative attitude and was eager to effect a compromise. Finally, however, he identified himself with the patriot cause and was elected from Westchester County to the provincial congress of New York (1775). In this assembly he became the leader of the patriotic party and made an able speech favoring the adoption of the recommendation of the Continental Congress that the colonies establish new governments. A delegate to the Constitutional Convention of New York, he was chosen to the committees for drafting a plan for the constitution—in which Livingston and Jay were also prominent—and for establishing a state fund. In 1777-80 he was a member of the Continental Congress, and almost immediately upon taking his seat was appointed one of a committee of five to visit Valley Forge and examine the condition of the troops. Early in 1779 he was made chairman of the important committee for receiving communications from our ministers abroad, and from the envoy of France. In this capacity he drew up the draft of instructions to the ministers which was adopted by Congress and formed the basis of the Treaty of Peace with Great Britain. In February 1780 he began the publication in the *Pennsylvania Packet* of a series of essays on American finances, in which he endeavored to show the wisdom of the colonists submitting to a reasonable taxation and outlined a scheme for such assessment. These essays influenced his appointment in 1781 as assistant financier to Robert Morris, a post he successfully filled until 1785. He was really the founder of the national coinage, though his plan was later modified by Jefferson and Hamilton; he introduced the decimal notation and devised the word 'cent' to indicate one of the lesser coins. In 1787 he was a delegate to the constitutional convention, and there he advocated a strongly centralized government, and [wrote the final] draft of the instrument."[5]



Robert Morris

Robert Morris (1734-1806), "American financier and statesman, a signer of the Declaration of Independence; born [in] Liverpool, England, 31 Jan. 1734.... He came to the colonies about 1747 and entered at Philadelphia the counting-room of Charles Willing, merchant; in 1754 formed a partnership with Thomas Willing; acquired a very considerable fortune for America of that time; and despite his strong loyalty to England, opposed the Stamp Act and signed the non-importation agreement of 1765. In October 1775 he was elected to the provincial assembly, and in 1776-78 was a member of the Continental Congress. On 2 July 1776 he voted against the Declaration of Independence and on 4 July absented himself; but on 2 August he was one of the signers. When hostilities began his services became of increasing value. When Congress fled from Philadelphia to Baltimore on 12 Dec. 1776, Morris was left in

charge of its affairs, and when it reassembled at Baltimore on 20 December was made with George Clymer of Pennsylvania and George Walton of Georgia a committee for the execution of Continental business. Morris did all that was done. Most of the business of the colonies during December and January was transacted by him; he prepared American ships for sea, assumed charge of incoming freights and supplied Washington with money. On 20 Feb. 1781 he was elected superintendent of finance. He found the treasury in a disordered state through a vastly depreciated paper currency, and at the lowest point in the fortunes of the Continental army borrowed money on his own credit and was the instrument in the difficult task of financing the war. He presented to Congress a plan for the organization of the Bank of North America, accepted 28 May; and himself subscribing $39,200 worth of shares. The bank was incorporated 31 Dec. 1781 and began operation 7 Jan. 1782. Morris resigned January 1783, but on request did not retire until 1 Nov. 1784. He was a member of the Pennsylvania assembly in 1776–78, 1778–79, 1780–81, 1785–87. In 1787 he was a member of the convention that framed the United States Constitution. He declined Washington's offer of the Secretaryship of the Treasury, but was elected United States Senator from Pennsylvania in 1789."[6]

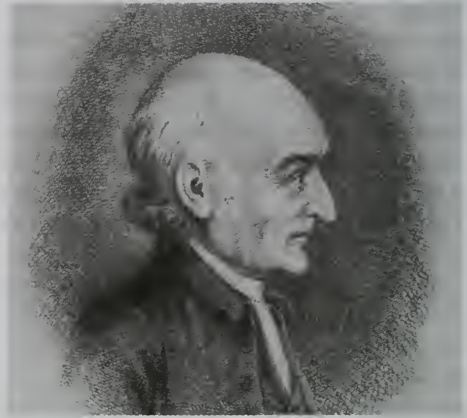


George Mason

George Mason (1725–1792). "Born in Stafford county (the part which is now Fairfax county), Virginia, in 1725. His family was of royalist descent and had emigrated to America after the execution of Charles I. His colonial ancestors held official positions in the civil and military service of Virginia. Mason was a near neighbour and a lifelong friend of George Washington, though in later years they disagreed in politics. His large estates and high social standing, together with his personal ability, gave Mason great influence among the Virginia planters, and he became identified with many enterprises, such as the organization of the Ohio Company and the founding of Alexandria (1749). He was a member of the Virginia House of Burgesses in 1759–1760. In 1769 he drew up for Washington a series of non-importation resolutions, which were adopted by the Virginia legislature. In July 1774 he wrote for a convention in Fairfax county a series of resolutions known as the Fairfax Resolves, in which he advocated a congress of the colonies and suggested non-intercourse with Great Britain, a policy subsequently adopted by Virginia and later by the Continental Congress. He was a member of the Virginia Committee of Safety from August to December 1775, and of the Virginia Convention in 1775 and 1776; and in 1776 he drew up the Virginia Constitution and the famous Bill of Rights, a radically democratic document which had great influence on American political institutions. In 1780 he outlined the plan which was subsequently adopted by Virginia for ceding to the Federal government her claim to the 'back lands,' i.e., territory north and north-west of the

Ohio River. From 1776 to 1788 he represented Fairfax county in the Virginia Assembly. He was a member of the Virginia House of Delegates in 1776–1780 and again in 1787–1788, and in 1787 was a member of the convention that framed the Federal Constitution, and as one of its ablest debaters took an active part in the work. Particularly notable was his opposition to the compromises in regard to slavery and the slave-trade. Indeed, like most of the prominent Virginians of the time, Mason was strongly in favour of the gradual abolition of slavery. He objected to the large and indefinite powers given by the completed Constitution to Congress, so he joined with Patrick Henry in opposing its ratification in the Virginia Convention (1788). Failing in this he suggested amendments, the substance of several of which was afterwards embodied in the present Bill of Rights. Declining an appointment as a United States Senator from Virginia, he retired to his home, Gunston Hall (built by him about 1758 and named after the family home in Staffordshire, England) where he died on the 7th of October 1792. With James Madison and Thomas Jefferson, Mason carried through the Virginia legislature measures disestablishing the Episcopal Church and protecting all forms of worship. In politics he was a radical republican, who believed that local government should be kept strong and central government weak; his democratic theories had much influence in Virginia and other southern and western states."[7]

George Wythe (pronounced With) (1726–1806), one of the lesser-known "great men" of the colonial period. He was born in Back River, Virginia, a short distance from Yorktown. "One of his ancestors was George Keith (1639–1716), a Scotch Quaker, distinguished as a mathematician



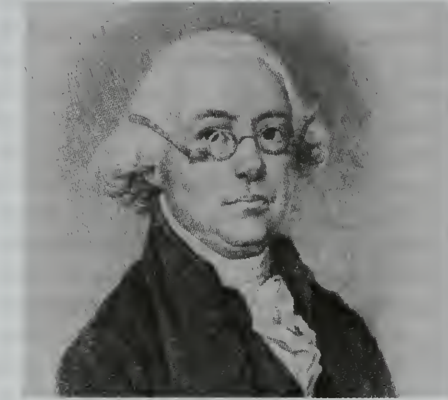
George Wythe

and for his opposition to slavery. These views were inherited by George Wythe, and passed on to his most famous pupil, Thomas Jefferson.

"From his mother, Wythe received a life-long bent toward classical scholarship. Even at the age of 80 he began to learn a new language. He was trained in the law by an uncle. Wythe's connection with the House of Burgesses, in Virginia, began on 27 Feb. 1752, on the eve of the French and Indian War. Hence he knew in a practical way the steps leading up to the Revolution, whose course he was destined to influence. He was a member of the Continental Congress and one of the signers of the Declaration of Independence. He sat in the Philadelphia Convention of 1787 and exerted himself to secure the ratification of the Constitution by Virginia the following year. For 10 years he was a member of Virginia's Supreme Court of Appeals, and for above 20 years sole chancellor of the State. However important and varied were such positions that he filled, George Wythe is not to be judged chiefly as statesman or jurist. He was greatest as teacher, and his most lasting work was the subtle influence of his singularly pure and lofty ideals. Either in

his law office or as professor in William and Mary College, he was the teacher of Thomas Jefferson, John Marshall, James Monroe, Henry Clay and scores of other men only less prominent than these. With Jefferson, in particular, Wythe maintained a friendship and interchange of thought which had a bearing upon national concerns. So highly did Jefferson prize the work of Wythe as a teacher, that he exerted himself to establish, in 1779, in the College of William and Mary a chair of law, expressly for the occupancy of his 'master and friend,' as he delighted to call Wythe. Wythe was the first professor of law in the United States. William and Mary College was the second in the English-speaking world to have a chair of Municipal Law, George Wythe coming to such a professorship a few years after Sir William Blackstone. Jefferson, in writing from Paris in 1785 to Dr. Richard Price, an English opponent of slavery, gives striking evidence of his estimate of the services which Wythe was rendering to his country: 'The College of William and Mary in Williamsburg, since the remodelling of its plan, is the place where are collected together all the young men (of Virginia) under preparation for public life. They are under the direction (most of them) of a Mr. Wythe, one of the most virtuous of characters, and whose sentiments on the subject of slavery are unequivocal.' Henry Clay, in a letter of 3 May 1851, to B.B. Minor, says in reference to Wythe: 'To no man was I more indebted, by his instructions, his advice, and his example, for the little intellectual improvement which I made, up to the period when, in my twenty-first year, I finally left the city of Richmond. . . . Harassed as he was with business; enveloped with perplexing papers, and intricate facts in chancery, he yet found time for many years to keep a private school for the instruction of a few young men at a time, always with very little, and often demanding no compensation.' That Wythe conceived the training of [public servants] to be his true task appears from this sentence in a letter on 5 Dec. 1785, to John Adams: 'A letter will meet me in Williamsburg, where I have again settled, assisting, as professor of law and police in the University there, to form such characters as may be fit to succeed those which have been ornamental and useful in the national councils of America.' In three signal instances Wythe was a forerunner. As early as 1764 he wrote Virginia's first remonstrance to the House of Commons against the Stamp Act, taking so advanced a position in regard to that ominous act as to alarm his fellow burgesses. He was perhaps the first judge to lay down, in 1782, the cardinal principle that a court can annul a statute deemed repugnant to the Constitution, thus anticipating by a score of years the classic decision of his great pupil, John Marshall, in the case of Marbury v. Madison. He was an ardent advocate for the emancipation of the slaves, not only infusing his students with his abolition sentiment, but actually freeing his own slaves and making provision for them in his will. His death occurred in Richmond, Va., in 1806, from poison administered by his great-nephew, who hoped to come thus into the inheritance of his estate. 'No man,' says Jefferson, 'ever left behind him a character more venerated than George Wythe. His virtue was of the purest kind; his integrity inflexible, and his justice exact; of warm patriotism, and devoted as he was to liberty and the natural and equal rights of men, he might truly be called the Cato of his country, without the avarice of the Roman; for a more disinterested person never lived. Temperance and regularity in all his habits gave him general good

health, and his unaffected modesty and suavity of manners endeared him to every one. He was of easy elocution, his language chaste, methodical in the arrangement of his matter, learned and logical in the use of it, and of great urbanity in debate. Not quick of apprehension, but with a little time profound in penetration, and sound in conclusion. His stature was of middle size, well formed and proportioned, and the features of his face manly, comely, and engaging.'"[8]



James Wilson

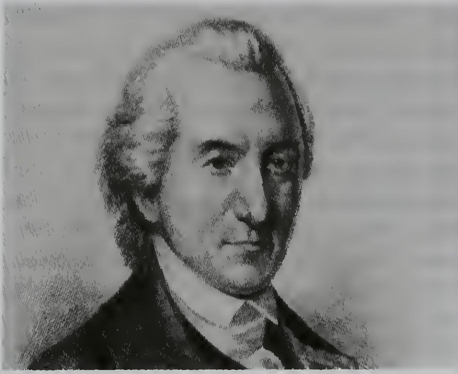
James Wilson (1742–1798). "Born in or near St. Andrews, Scotland, on the 14th of September 1742. He matriculated at the University of St. Andrews in 1757 and was subsequently a student at the universities of Glasgow and Edinburgh. In 1765 he emigrated to America. Landing at New York in June, he went to Philadelphia in the following year and in 1766–1767 was instructor of Latin in the college of Philadelphia, later the university of Pennsylvania. Meanwhile he studied law in the office of John Dickinson, was admitted to the bar in 1767.... In August 1774 he published a pamphlet *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament,* in which he argued that Parliament had no constitutional power to legislate for the colonies; this pamphlet strongly influenced members of the Continental Congress which met in September. Wilson was a delegate to the Pennsylvania provincial convention in January 1775, and he sustained there the right of Massachusetts to resist the change in its charter, declaring that as the force which the British government was exercising to compel obedience was 'force unwarranted by any act of Parliament, unsupported by any principle of the common law, unauthorized by any commission from the crown,' resistance was justified by 'both the letter and the spirit of the British constitution.' He also, by his speech, led the colonies in shifting the burden of responsibility from Parliament or the king's ministers to the king himself. In May 1775 Wilson became a member of the Continental Congress. When a declaration of independence was first proposed in that body he expressed the belief that a majority of the people of Pennsylvania were in favour of it, but as the instructions of the delegates from Pennsylvania and some of the other colonies opposed such a declaration, he urged postponement of action for the purpose of giving the constituents in those colonies an opportunity of removing such instructions.... Receiving a commission as colonel in May 1775, Wilson raised a battalion of troops in his county of Cumberland, and for a short time in 1776 he took part in the New Jersey campaign, but his principal labours in 1776 and 1777 were in Congress. In January 1776 he was appointed a member of a committee to prepare an address to the colonies, and the address was written by him; he served on a similar committee in May 1777, and wrote the address *To the Inhabitants of the United States,* urging their firm support of the cause of independence; he drafted the plan of treaty with France together with instructions for negotiating it; he was a

member of the Board of War from its establishment in June 1776 until his retirement from Congress in September 1777; from January to September 1777 he was chairman of the Committee on Appeals, to hear and determine appeals from the courts of admiralty in the several states.... In September 1777 the political faction in his state which had opposed independence again came into power, and Wilson was kept out of Congress until the close of the war; he was back again, however, in 1783, and 1785–1786, and, advocating a sound currency, laboured in co-operation with Robert Morris to direct the financial policy of the Confederation.

"Soon after leaving Congress in 1777 Wilson removed to Annapolis, Maryland, to practice law, but he returned to Philadelphia in the following year. In 1779 he was commissioned Advocate-General for France, and in this capacity he represented Louis XVI in all claims arising out of the French alliance until the close of the war.... Wilson was closely associated with Robert Morris in organizing the Bank of North America, and in the Act of Congress incorporating it (Dec. 31, 1781) he was made one of the directors. In 1782 the legislature of Pennsylvania granted a charter to this bank, but three years later it passed an act to repeal it. Wilson responded with a famous constitutional argument in which he sustained the constitutionality of the bank on the basis of the *implied* powers of Congress.

"As a constructive statesman Wilson had no superior in the Federal Convention of 1787. He favoured the independence of the executive, legislative and judicial departments, the supremacy of the Federal government over the state governments, and the election of senators as well as representatives by the people, and was opposed to the election of the President or the judges by Congress. His political philosophy was based upon implicit confidence in the people, and he strove for such provisions as he thought would best guarantee a government by the people. When the Constitution had been framed, Wilson pronounced it 'the best form of government which has ever been offered to the world,' and he, at least, among the framers regarded it not as a compact but as an ordinance to be established by the people. During the struggle for ratification he made a speech before a mass meeting in Philadelphia which has been characterized as 'the ablest single presentation of the whole subject.' In the Pennsylvania ratification convention (Nov. 21 to Dec. 15, 1787), he was the Constitution's principal defender. Having been appointed professor of law in the university of Pennsylvania in 1790, he delivered at that institution in 1790–1791 a course of lectures on public and private law; some of these lectures, together with his speeches in the Federal convention, before the mass meeting in Philadelphia, and in the Pennsylvania ratification convention, are among the most valuable commentaries on the Constitution.

"Wilson was a delegate to the state constitutional convention of 1789–1790, and a member of the committee which drafted the new constitution. In 1789 Washington appointed him an associate justice of the United States Supreme Court, and in 1793 he wrote the important decision in the case of *Chisolm* v. *Georgia*, the purport of which was that the people of the United States constituted a sovereign nation and that the United States were not a mere confederacy of sovereign states. He continued to serve as associate justice until his death, near Edenton, North Carolina, on the 28th of August 1798."[9]



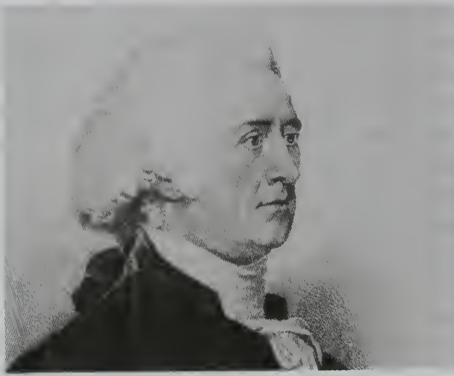
John Dickinson

John Dickinson (1732–1808) "American statesman and pamphleteer, was born in Talbot county, Maryland, on the 8th of November 1732. He removed with his father to Kent county, Delaware, in 1740, studied under private tutors, read law, and in 1753 entered the Middle Temple, London. Returning to America in 1757, he began the practice of law in Philadelphia, was speaker of the Delaware assembly in 1760, and was a member of the Pennsylvania assembly in 1762–1765 and again in 1770–1776. He represented Pennsylvania in the Stamp Act Congress (1765) and in the Continental Congress from 1774 to 1776, when he was defeated owing to his opposition to the Declaration of Independence. He then retired to Delaware, served for a time as private and later as brigadier-general in the state militia, and was again a member of the Continental Congress (from Delaware) in 1779–1780. He was president of the executive council, or chief executive officer, of Delaware in 1781–1782, and of Pennsylvania in 1782–1785, and was a delegate from Delaware to the Annapolis Convention of 1786 and the Federal Constitutional Convention of 1787. Dickinson has aptly been called the 'Penman of the Revolution.' No other writer of the day presented arguments so numerous, so timely and so popular. He drafted the 'Declaration of Rights' of the Stamp Act Congress, the 'Petition to the King' and the 'Address to the Inhabitants of Quebec' of the Congress of 1774, and the second 'Petition to the King' and the 'Articles of Confederation' of the second Congress. Most influential of all, however, were *The Letters of a Farmer in Pennsylvania*, written in 1767–1768 in condemnation of the Townshend Acts of 1767, in which he rejected speculative natural rights theories and appealed to the common sense of the people through simple legal arguments. By opposing the Declaration of Independence, he lost his popularity and was never able entirely to regain it. As the representative of a small state, he championed the principle of state equality in the Constitutional Convention, but was one of the first to advocate the compromise, which was finally adopted, providing for equal representation in one house and proportional representation in the other. He was probably influenced by Delaware prejudice against Pennsylvania when he drafted the clause which forbids the creation of a new state by the junction of two or more states or parts of states without the consent of the states concerned as well as of Congress. After the adjournment of the Convention he defended its work in a series of letters signed 'Fabius,' which will bear comparison with the best of the Federalist productions. It was largely through his influence that Delaware and Pennsylvania were the first two states to ratify the Constitution. Dickinson's interests were not exclusively political. He helped to found Dickinson College (named in his honour) at Carlisle, Pennsylvania, in 1783, was the first president of its board of trustees, and was for many years its chief benefactor. He died on the 14th of February 1808 and was buried in the Friends' burial ground in Wilmington, Del."[10]

Roger Sherman

Roger Sherman (1721–1793). "Born at Newton, Massachusetts, on the 19th of April 1721. He removed with his parents to Stoughton in 1723, attended the country school there, and at an early age learned the cobbler's trade in his father's shop. Removing to New Milford, Connecticut, in 1743, he worked as county surveyor, engaged in mercantile pursuits, studied law, and in 1754 was admitted to the bar. He represented New Milford in the Connecticut Assembly in 1755–1756 and again in 1758–1761. From 1761 until his death New Haven was his home. He was once more a member of the Connecticut Assembly in 1764–1766, was one of the governor's assistants in 1766–1785, a judge of the Connecticut superior court in 1766–1789, treasurer of Yale College in 1765–1776, a delegate to the Continental Congress in 1774–1781 and again in 1782–1784, a member of the Connecticut Committee of Safety in 1777–1779 and in 1782, mayor of New Haven in 1784–1793, a delegate to the Federal Constitutional Convention of 1787 and to the Connecticut Ratification Convention of the same year, and a member of the Federal House of Representatives in 1789–1791 and of the United States Senate in 1791–1793. He was on the committee which drafted the Declaration of Independence, and also on that which drafted the Articles of Confederation. His greatest public service, however, was performed in the Federal Constitutional Convention. In the bitter conflict between the large state party and the small state party he and his colleagues, Oliver Ellsworth and William Samuel Johnson, acted as peacemakers. Their share in bringing about the final settlement, which provided for equal representation in one house and proportional representation in the other, was so important that the settlement itself has come to be called the 'Connecticut Compromise.' He helped to defeat the proposal to give Congress a veto on state legislation, showing that it was illogical to confer such a power, since the Constitution itself is the law of the land and no state act contravening it is legal. In the Federal Congress (1789–1793) he favoured the assumption of the state debts, the establishment of a national bank and the adoption of a protective tariff policy. Although strongly opposed to slavery, he refused to support the Parker resolution of 1789 providing for a duty of ten dollars per head on negroes brought from Africa, on the ground that it emphasized the property element in slavery. He died in New Haven on the 23rd of July 1793. Sherman was not a deep and original thinker like James Wilson, nor was he a brilliant leader like Alexander Hamilton; but owing to his conservative temperament, his sound judgment and his wide experience he was well qualified to lead the compromise cause in the convention of 1787."[11]

John Rutledge (1739–1800). "Born in Charleston, South Carolina, in 1739. He studied law in London and began to practice in Charleston in 1761. He was a delegate to the Stamp Act Congress in 1765,



John Rutledge

and to the Continental Congress in 1774–77 and 1782–83; he was chairman of the committee which framed the state constitution of 1776, and the first 'president' (governor) of South Carolina in 1776–78. Disapproving of certain changes in the constitution, he resigned in 1778, but was elected governor in the following year, and served until 1782. From 1784 to 1789 he was a member of the state court of chancery. In the Constitutional Convention of 1787 he urged that the president and the Federal judges should be chosen by the national legislature, and preferably by the Senate alone, and that the president should be chosen for a term of seven years, and should be ineligible to succeed himself. Rutledge championed the Constitution in the South Carolina convention by which that instrument was adopted on behalf of the state. He was associate justice of the United States Supreme Court in 1789–91, and chief justice of the supreme court of South Carolina in 1791–95. Nominated chief justice of the Supreme Court of the United States in 1795, he presided during the August term, but the Senate refused to confirm the nomination, apparently because of his opposition to the Jay Treaty. His mind failed late in 1795, and he died in Charleston on the 23rd of July 1800."[12]

Charles Pinckney (1757–1824), "American statesman, was born on the 26th of October 1757 at Charleston, South Carolina; he was the son of Charles Pinckney (1731–1784), first president of the first South Carolina Provincial Congress (Jan. to June 1775), and a cousin of Charles Cotesworth Pinckney and Thomas Pinckney. He was studying law at the outbreak of the War of Independence, served in the early campaigns in the South, and in 1779 was elected to the South Carolina House of Representatives. He was captured by the British at the fall of Charleston (1780), and remained a prisoner until the close of hostilities. He was elected a delegate to the Congress of the Confederation in 1784, 1785 and 1786, and in 1786 he moved the appointment of a committee 'to take into consideration

Charles Pinckney

the affairs of the nation,' advocating in this connection an enlargement of the powers of Congress. The committee having been appointed, Pinckney was made chairman of a sub-committee which prepared a plan for amending the articles of confederation. In 1787 he was a delegate to the Federal Constitutional Convention, and on the same day (May 29) on which Edmund Randolph . . . presented what is known as the

Virginia plan, Pinckney presented a draft of a constitution which is known as the Pinckney plan.... Pinckney was president of the State Convention of 1790 that framed a new constitution for South Carolina, was governor of the state from 1789 to 1792, a member of the state House of Representatives in 1792–1796, and again governor from 1796 to 1798. From 1799 to 1801 he was a member of the United States Senate. He entered public life as a Federalist, but later became the leader in organizing the Democratic-Republican party in his state, and contributed largely to the success of Thomas Jefferson in the presidential election of 1800."[13]

Charles Cotesworth Pinckney

Charles Cotesworth Pinckney (1746–1825). "Born in Charleston, South Carolina, on the 25th of February 1746, the son of Charles Pinckney (died 1758), by his second wife, the celebrated girl [plantation owner], Eliza Lucas.... When a child he was sent to England, like his brother Thomas after him, to be educated. Both of them were at Westminster and Oxford and were called to the bar, and for a time they studied in France at the Royal Military College at Caen. Returning to America in 1769, C.C. Pinckney began the practice of law at Charleston, and soon became deputy attorney-general of the province. He was a member of the first South Carolina provincial congress in 1775, served as colonel in the South Carolina militia in 1776–1777, was chosen president of the South Carolina Senate in 1779, took part in the Georgia expedition and the attack on Savannah in the same year, was captured at the fall of Charleston in 1780 and was kept in close confinement until 1782, when he was exchanged. In 1783 he was commissioned a brevet brigadier-general in the continental army. He was an influential member of the Constitutional Convention of 1787, advocating the counting of all slaves as a basis of representation and opposing the abolition of the slave-trade. He opposed as 'impracticable' the election of representatives by popular vote, and also opposed the payment of senators, who, he thought, should be men of wealth. Subsequently Pinckney bore a prominent part in securing the ratification of the Federal constitution in the South Carolina convention called for that purpose in 1788 and in framing the South Carolina State Constitution in the convention of 1790. After the organization of the Federal government, President Washington offered him, at different times, appointments as associate justice of the Supreme Court (1791), secretary of war (1795) and secretary of state (1795), each of which he declined; but in 1796 he succeeded James Monroe as minister to France. The Directory refused to receive him, and he retired to Holland, but in the next year, Elbridge Gerry and John Marshall having been appointed to act with him, he again repaired to Paris, where he is said to have made the famous reply to a veiled demand for a 'loan' (in reality for a gift), 'Millions for defence, but not one cent for tribute.'"[14]

George Washington presides as delegates to the Constitutional Convention join in debate.

What Kind of a Constitution?

All of the delegates came to the convention determined to restructure the Articles of Confederation. However, few except possibly Madison and Hamilton had given thought to the possibility of scrapping the Articles and setting up a completely different type of constitutional structure. Madison himself was not certain about the details, but he ahd a strong conviction that on amount of patching could remedy the defective Articles of Confederation.

Since only the Virginia and Pennsylvania delegations were present by May 14 and there were not enough delegates from the other states to commence the convention until May 25, Madison had the opportunity to meet frequently with his Virginia colleagues during the intervening days to work up a proposed agenda for the convention.

The Virginia delegation finally agreed with Madison that no amount of patchwork on the Articles of Confederation would salvage the system sufficiently to provide the kind of national government they needed. They therefore decided to recommend to the convention a much more sophisticated structure.

Washington was particularly sympathetic to the new approach. He pointed out that unless they felt good about their proposal they would certainly have difficulty defending it during the debates in Congress and the ratification conventions of the states.

The next task was to decide how to structure the new system. Gradually, they formulated fifteen resolutions describing some of the things they thought the new system should contain. These became known as Virginia's "Fifteen Resolves." They later formed the basic agenda for the Constitutional Convention. After two months of debates the list had grown to twenty-three "resolves."

A most interesting aspect of the original Fifteen Resolves is the way they were handled in the convention. The following table indicates the forty-one specific issues set forth in the Resolves and the final disposition they received after extensive discussion and debate.

Recommendations of the Virginia Plan

Accepted	1.	Adopt a system which will provide for the "common defense, security of liberty and general welfare."
Rejected	2.	The number of representatives for each state shall be proportioned according to the "quotas of contributions" (taxes) paid;
Accepted	3.	or according to the number of free inhabitants.
Accepted	4.	The Congress shall consist of two houses.
Accepted	5.	Members of the House of Representatives shall be elected by the people of the several states.
Accepted	6.	Members shall be paid "liberal stipends" for their services.
Accepted	7.	Members are prohibited from holding any state or federal office while serving in the national legislature.
Rejected	8.	Members shall be ineligible for reelection for a stipulated number of years after serving one term.
Rejected	9.	Members shall be subject to recall.
Rejected	10.	Senators shall be elected by the House of Representatives.
Rejected	11.	Senators shall be selected by the House of Representatives from lists of nominees furnished by the state legislatures.
Accepted	12.	Senators shall hold a term longer than the Representatives.
Accepted	13.	Senators shall receive "liberal stipends" for their services.
Accepted	14.	Senators shall be prohibited from holding any federal or state office while serving in the Senate.
Rejected	15.	Each Senator shall also be prohibited from holding any office for a designated number of years following his term as Senator.
Accepted	16.	Each branch of the Congress shall be permitted to initiate acts for legislative consideration.
Accepted	17.	The Congress shall legislate in all cases where the states would be incompetent to act.
Accepted	18.	The Congress shall legislate in all cases where it would interrupt the harmony of the states if they acted individually.
Rejected	19.	The Congress shall have the authority to nullify any state legislation which is considered to be unconstitutional.
Rejected	20.	Congress can call out the federal troops against any state which does not fulfill its duties.
Rejected	21.	A President shall be chosen by the Congress.
Accepted	22.	He shall receive a fixed compensation which cannot be increased or decreased during his term of office.
Rejected	23.	He shall be ineligible to serve a second time.

Accepted	24.	He shall administer all of the executive authority previously assigned to Congress.
Half/Half	25.	The President and several designated judges shall review all legislation as a "Council of Revision." The Council shall have a veto power over any objectionable legislation.
Accepted	26.	The legislature may override the veto by a second vote.
Accepted	27.	A national judiciary shall be established with one or more supreme tribunals and such lesser tribunals as the legislature may think necessary.
Accepted	28.	Judges in the national courts shall hold office "during good behavior" for life.
Rejected	29.	Each judge shall receive compensation which shall not be *increased* during his term of office.
Accepted	30.	Each judge shall receive compensation which shall not be *decreased* during his term of office.
Accepted	31.	Cases shall be initiated in the lower courts, and the Supreme Court shall hear cases on appeal.
Accepted	32.	Jurisdiction of the national courts shall include piracies, felonies on the high seas, captured prisoners, cases in which foreigners or citizens of other states may be involved, cases involving federal taxes, or cases which may involve "the national peace and harmony."
Rejected	33.	The national courts shall handle cases of impeachment.
Accepted	34.	New states shall be admitted to the Union with the approval of Congress, but the vote need not be unanimous.
Accepted	35.	The national government will guarantee that each state shall maintain a republican form of government.
Accepted	36.	The authority of the Congress under the Articles of Confederation shall continue in power until a designated date following the reform of the Articles of the Union.
Accepted	37.	A provision for the amending of the new constitution should be included.
Half/Half	38.	The assent of the Congress should not be required in the amendment process.
Accepted	39.	All officers of each state shall be required to take an oath to uphold and support the new constitution.
Accepted	40.	The proposals for the new constitution shall be submitted to Congress for its approval.
Accepted	41.	The new constitution will then be submitted to conventions in the states which are "to be expressly chosen by the people."

In summary, it will be seen that out of the 41 proposals in Virginia's "Fifteen Resolves," there were 12 outright rejections and 2 half rejections. It is obvious that this was no "rubber stamp" convention.

The Convention Opens

The convention opened on May 25, 1787, and George Washington was immediately and unanimously elected convention president.

A secretary by the name of Major William Jackson of South Carolina had been employed, but he was not really competent. It was James Madison who was the real secretary and historian. He sat up front and took copious notes on everything that was said. After each session Madison would work far into the night filling in details. He occasionally made himself ill from fatigue and overwork trying to capture every detail of the convention. These notes were kept secret for 50 years, but they were finally published by an act of Congress in 1840. They constitute the most authoritative record available on the convention.

Rules Adopted

A number of interesting rules were prepared by George Wythe and his committee and were then adopted by the convention.

1. The proceedings were to be conducted in secret. This was to prevent false rumors or misinformation from spreading across the country while the Founders were still threshing out the formula which would solve the problems plaguing the nation. Guards were posted at the doors, and no one was admitted without signed credentials.
2. Each state was to be allowed one vote, and the majority of the delegation from a state had to be present and in agreement in order to have its vote counted.
3. Many times during the proceedings a poll was taken of the individual delegates to see how they stood, but the rule was adopted that none of these votes were to be recorded lest delegates be embarrassed if they later changed their minds as the discussion progressed.
4. Each delegate could speak only twice on each issue until after everyone else had been given the opportunity to speak. And no one could speak more than twice without special permission of the convention members.
5. Everyone was expected to pay strict attention to what was being said. There was to be no reading of papers, books, or documents while someone was speaking.
6. All remarks were to be addressed to the president of the convention and not to the members of the convention. This was to avoid heated polemics between individuals engaging in direct confrontation.

The Fifteen Resolves

It was Tuesday, May 29, after the delegations from nine states had arrived and all of the preliminaries had been arranged, that Governor Edmund Randolph of Virginia arose and introduced the "Fifteen Resolves" which had been prepared by the delegation from his state.

The convention then followed a procedure which greatly facilitated informal discussion of each issue. It resolved itself into a "committee of the whole." George Washington stepped down from the chair and Nathaniel Gorham replaced him as chairman of the Committee of the Whole.

The discussion then continued on the basis of an informal "committee" instead of a formal "convention." At any time they could resolve themselves back into the "convention" and formally vote on the matter previously decided in the committee.

This was only one of several devices employed by the convention to encourage extensive discussion and numerous straw ballots to see how they were progressing. As indicated earlier, no record was officially kept of the vote, but James Madison frequently made note of how Washington voted (Washington could vote in the committee since he was not in the chair).

Striving for Consensus

The Founders were most anxious to get general agreement whenever possible, rather than merely a majority vote. In the Anglo-Saxon meetings the freemen did not take a vote, but kept "talking it out" until everyone or practically everyone felt satisfied. This method of trying to "talk it out" until a substantial agreement could be attained was followed in the Convention.

This is illustrated by the discussion of how to choose Senators. The Virginia Resolves wanted the House of Representatives to select Senators. Apparently the Virginia delegation was finally persuaded to change its mind, because the record says the vote in favor of having Senators appointed by the state legislatures was approved "unanimously."

Three Compromises

Before the Convention was over, the members had reached general agreement on all the major issues except three. These issues included slavery, the regulation of commerce, and the apportionment of representation for each state. All three of these problems were worked out on the basis of genuine compromise, since a consensus or general agreement could not be reached.

On June 14, the proceedings were suddenly interrupted by William Paterson of New Jersey, who asked to have the day free for the preparation of a new plan which the smaller states wished to present the following day.

The New Jersey Plan

The New Jersey Plan was laid before the Convention on Friday, June 15. William Paterson said the smaller states wanted to scrap the Virginia Resolves and go back to patching up the original Articles of Confederation. He then presented the New Jersey Plan.

The following day, James Wilson of Pennsylvania compared the Virginia Plan and the New Jersey Plan point by point:

Virginia Plan	New Jersey Plan
Two branches for the legislature.	A single legislative body.
The legislative powers derived from the people.	Legislative powers derived from the states.
A single executive.	More than one executive.
A majority of the legislature can act.	A small minority can control the legislature.
Remove the executive by impeachment.	Remove the President upon application of a majority of the states.
Allow the establishment of inferior federal courts.	No provision.

James Madison acted as unofficial historian for the convention.

Hamilton's Plan

While the Convention was contemplating the two different plans, Alexander Hamilton suddenly arose and presented an entirely different plan of his own. He said it was too dangerous to tread untried waters. It would be best to go back to the British pattern. He recommended:

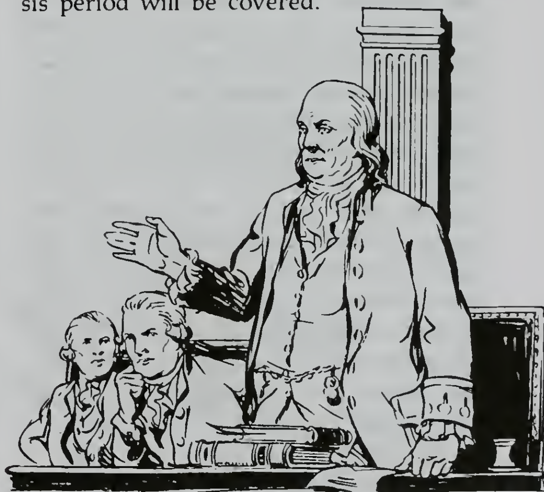
1. A single executive chosen for life by electors from the states. He wanted the President to have an absolute veto over any legislation, similar to the veto power of the king of England.
2. Senators were also to be chosen for life, similar to the English House of Lords.
3. The House of Representatives would be chosen by the people for a term of three years.
4. Governors of the states would be appointed by the federal government, just as the king of England did before the Revolution.

Madison noted that Hamilton's plan was "approved by all and supported by none." It was not even discussed, let alone voted upon.

Madison's Plea

On June 19, a moving speech was given by James Madison, in which he said the convention must come up with a "Constitution for the Ages" and only the Virginia Plan would stand the test of time. Immediately afterwards, the New Jersey Plan was voted down and Hamilton's plan was abandoned. Hamilton even abandoned it himself and returned to New York soon after. However, he came back before the Convention adjourned.

After June 19, the Convention tried to probe some of the more delicate questions which had previously been postponed. This is known as the crisis period and lasted clear up until July 26. As we discuss the Constitution in detail, many of the problems dealt with during the crisis period will be covered.



Benjamin Franklin urged that the Convention open each day with prayer.

Franklin's Plea for Prayer

It was during the quarreling and heated debating on June 28 that 81-year-old Benjamin Franklin made his famous plea for prayer. Said he:

"In the beginning of the contest with

Britain, when we were sensible of danger, we had daily prayers in this room for divine protection. Our prayers, sir, were heard; and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of a superintending Providence in our favor. To that kind Providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful Friend? Or do we imagine that we no longer need [His] assistance?

"I have lived, sir, a long time; and the longer I live the more convincing proofs I see of this truth — *that God governs in the affairs of men.* And if a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without His aid? We have been assured, sir, in the sacred writings, that 'except the Lord build the house they labor in vain that build it.' I firmly believe this; and I also believe that without His concurring aid we shall succeed in this political building no better than the builders of Babel; we shall be divided by our little partial, local interests, our projects will be confounded and we ourselves shall become a reproach and a byword down to future ages. And, what is worse, mankind may hereafter, from this unfortunate instance, despair of establishing government by human wisdom and leave it to chance, war, or conquest.

"I, therefore, beg leave to move:

"That hereafter prayers, imploring the assistance of Heaven and its blessing on our deliberations, be held in this assembly every morning before we proceed to business, and that one or more of the clergy of this city be requested to officiate in that service."[15]

Franklin's motion to invite in a minister to serve as the chaplain and offer daily prayers did not pass for the simple reason that the professional ministers required payment for their prayers, and the Convention had no money to pay for the same. Nevertheless, his plea had a sobering effect on the quarreling delegates and they set about their task with greater determination.

Sixty Ballots on One Issue

Another valley of shadow enveloped the Convention between July 10 and July 16. Just trying to decide how the President should be elected required over 60 ballots. During this dark period Washington wrote:

"I almost despair of seeing a favorable issue to the proceedings of the Convention, and do therefore repent having had any agency in the business."[16]

Observers said he looked as grim as when he was at Valley Forge.

It was on this date, July 10, that the two remaining delegates from New York, Lansing and Yates, left the Convention and never returned.

The Connecticut Compromise

Nevertheless, a big breakthrough came on July 16 when the Convention finally agreed to a formula for the allocating of representation in Congress.

The small states had been determined to have one vote for each state as provided in the Articles of Confederation.

The larger states had insisted that representation should be according to population. Georgia argued that this would give the big state of Virginia sixteen times more representatives than Georgia. Madison argued back that if each state had one vote, then a person from Georgia had sixteen times more representation than a citizen of Virginia.

Both sides finally agreed to accept the suggestion of Roger Sherman of Connect-

icut that each state have equal representation in the Senate but that the House of Representatives should be apportioned to each state according to population. This suggestion was made three separate times during the heated debates before it was finally accepted.

Committee on Detail

Finally, by July 26, the principal issues had been sufficiently settled to put the Constitution into rough form. A Committee on Detail was therefore appointed with instruction to have its report completed by August 6.

From August 6 to September 8, the Convention hammered out many more important details which needed refining. By this time, 11 of the 55 delegates had departed and gone home. However, Hamilton had returned but could not vote because Yates and Lansing had left, leaving New York without a quorum. Hamilton would have needed at least one of them before a ballot could be cast for New York.

Committee on Style

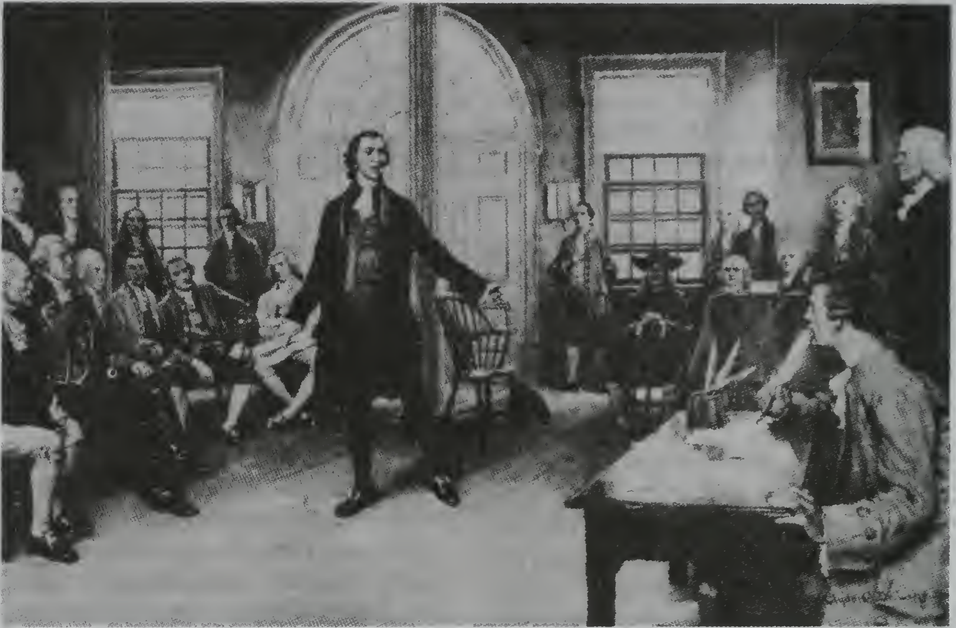
On September 8, the amended rough draft from the Committee on Detail was turned over to a special Committee on Style to do the final rewrite. Most of the rewrite was done in four days by a highly skilled lawyer and writer who was a delegate from Pennsylvania. His name was Gouverneur Morris.

When the new draft was read to the Convention, some of the delegates raised 18 new issues during the next three days. However, the vast majority of the delegates were satisfied with the draft as written, and therefore the Constitution was turned over to a skilled penman to be inscribed in its final form.

For 150 years no one had identified the "skilled penman" who beautifully inscribed in barely two days the final draft of the Constitution.

Finally, in 1937 John C. Fitzpatrick of the Library of Congress proved that the penman was Jacob Shallus, a young German who had volunteered to serve under

Gouverneur Morris, a peg-legged lawyer from Pennsylvania, organized the Constitution and wrote the Preamble.



Three delegates to the Convention were so concerned over the lack of a Bill of Rights that they refused to sign the Constitution.

Washington in the Revolutionary War and later became assistant clerk for the Pennsylvania Assembly.[17]

Signing the Constitution

On Monday, September 17, 1787, a total of 41 of the original 55 delegates solemnly met in the east room of Independence Hall for the signing. Because a few delegates still had some significant reservations, Franklin asked that the Constitution be signed by the majority of each delegation so they could say it was by "unanimous consent" of all the "states" represented. This was done. The following delegates did not sign:

1. Elbridge Gerry of Massachusetts
2. George Mason of Virginia
3. Governor Edmund Randolph of Virginia

Their main objection was that the Constitution did not include a Bill of Rights.

The other delegates came forward, however, and affixed their names. It is recorded that when Franklin signed, "The old man wept."[18]

Later, as the last delegates were signing, Franklin referred to a picture of the sun on the back of George Washington's chair. He said: "I have ... often, in the course of the session, ... looked at that [sun] behind the president without being able to tell whether it was rising or setting. But now at length I have the happiness to know that it is a rising and not a setting sun."[19]

As the famous Convention came to a close it was as though a great battle had been won. But the Constitution still had to go to the Congress and the people. This meant that the great intellectual battle to get the American charter of liberty established in the hearts and minds of the American people still had to be fought.

1. Mortimer J. Adler et al., eds., *The Annals of America*, 20 vols. by 1977 (Chicago: Encyclopaedia Britannica, 1968–), 3:70.

2. Samuel Eliot Morison, *Oxford History of the American People* (New York: Oxford University Press, 1965), p. 305.

3. Extracted from the *Encyclopaedia Britannica*, 11th ed., 29 vols. (1910–11), 22:886.

4. Ibid., 12:880–81.

5. Extracted from the *Encyclopedia Americana*, 30 vols. (1946), 19:475.

6. Ibid., p. 477.

7. *Encyclopaedia Britannica*, 17:838–39.

8. *Encyclopedia Americana*, 29:591.

9. *Encyclopaedia Britannica*, 28:693.

10. Ibid., 8:184.

11. Ibid., 24:851.

12. Ibid., 23:945.

13. Ibid., 21:616.

14. Ibid., pp. 616–17.

15. Smyth, *The Writings of Benjamin Franklin*, 9:600–601.

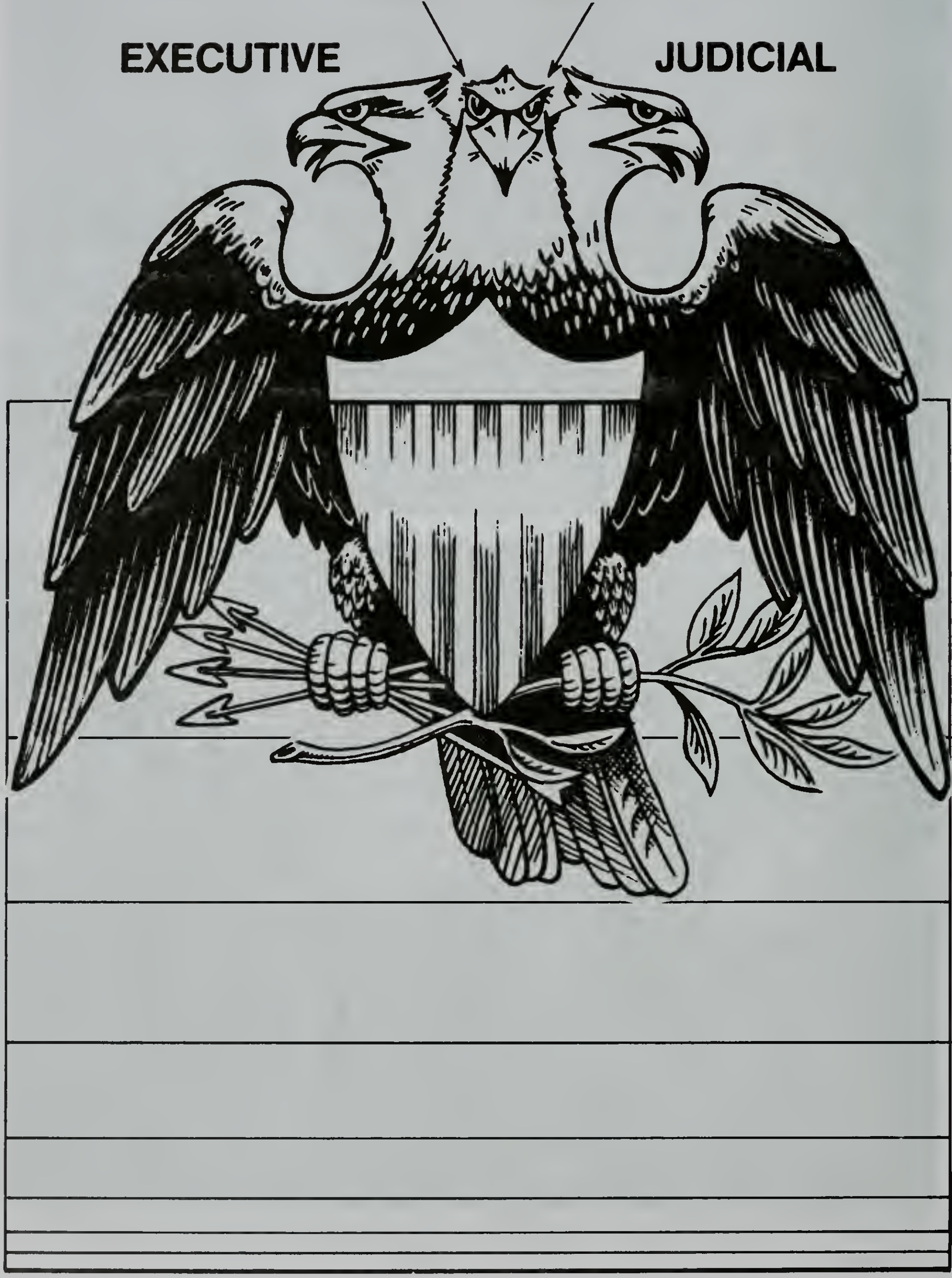
16. Fitzpatrick, *The Writings of George Washington*, 29:245.

17. Andrew M. Allison, "Who Actually Wrote the Constitution?" *The Constitution*, May–June 1986, pp. 33–35.

18. Bowen, *Miracle at Philadelphia*, p. 263.

19. Max Farrand, ed., *The Records of the Federal Convention of 1787*, 4 vols. (New Haven, Conn.: Yale University Press, 1937), 2:648.

On September 17, 1787, thirty-nine delegates signed the Constitution. It next would go to Congress for approval, then to the state for ratification.


LEGISLATIVE
HOUSE
SENATE
EXECUTIVE
JUDICIAL

CHAPTER

THE FOUNDERS INVENT A NEW SYSTEM OF POLITICAL SCIENCE

The most impressive aspect of the American constitutional convention was the energetic mental exertion which the Founders exhibited in an effort to think their way out of the morass of ideological confusion prevailing among political philosophers of the time. Their goal was to somehow discover a completely new basis for the government of human beings.

The fact that they knew they had achieved something superlative is reflected in these words of James Madison:

"Is it not the glory of the people of America that, whilst they have paid a decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons

Parliament provided a helpful model to the Founders, but it was one they chose to deviate from rather than copy.

of their own experience? To this manly spirit posterity will be indebted for the possession, and the world for the example, of the numerous innovations displayed on the American theater in favor of private rights and public happiness. . . .

"Happily for America, happily we trust for the whole human race, they pursued a new and more noble course. They accomplished a revolution which has no parallel in the annals of human society. They reared the fabrics of governments which have no model on the face of the globe. They formed the design of a great Confederacy, which it is incumbent on their successors to improve and perpetuate."[1]

The Big Question — What Kind of a Republic?

One might have expected that the Founders would have simply said, "Let's set up a republic and be done with it," but there are three kinds of republics. The first two were well known to the Founders and they did not like either kind.

The first was the unitary republic, which England was in process of adopting under a limited monarchy. This is a system in which there is legislative or parliamentary supremacy over the government of the entire nation. The Founders had already discovered that "legislative supremacy" can be as tyrannical as a king; therefore, they rejected this type of republic.

The second type is known as the confederation of independent states; in other words, a "confederated republic." Under this system each state retains its independence and sovereign supremacy but confederates with other states for mutual defense or certain other advantages. This type of republic does not have legislative supremacy but rather "state supremacy." The Founders had used this second approach in setting up the Articles of Confederation, and it had almost caused them to lose the Revolutionary War. Therefore they rejected this type of republic as well.

What they were seeking was a third type, one that hadn't been invented yet. This raises an interesting question.

Why Did the Founders Sidestep the British System?

Baron Charles de Montesquieu had praised the British parliamentary system of government in his book, *The Spirit of the Laws.* He thought he saw in the rise of parliamentary or legislative supremacy the budding principle of separation of powers with checks and balances. Both of these were strongly advocated in his book. But the Founders felt otherwise. In a sense, this is rather amazing. Every one of the Founders had been reared and trained under the canopy of English law and British culture, yet they rejected much of the constitutional fabric of the mother country. For example:

1. They rejected the entire concept of a monarchy—even a limited monarchy.
2. They rejected the idea of a prime minister selected from the members of Parliament.
3. They rejected the idea of a cabinet selected from among the members of Parliament.
4. They rejected the idea of the members of Parliament serving as the executive administrators of the government in a cabinet.
5. They rejected the idea of parliamentary supremacy in favor of constitutional supremacy.
6. They rejected the British idea of an "unwritten constitution."
7. They rejected the idea of an upper House of Lords occupied by a body of lifetime aristocrats.
8. They rejected the idea of a unitary republic with all power in the central government.
9. They rejected the idea of the national government having the power to nullify the laws of the local governments.
10. They rejected the power of the executive to dissolve the legislature.
11. They rejected the British coinage system for a decimal system.

Hamilton's Plan

The nearest the Founders came to discussing the potential merits of the British system was early in the Constitutional Convention when Alexander Hamilton became alarmed over the diversity of opinion concerning the new government. As we discussed in the previous chapter, he gave an eloquent speech defending the British system, which had "stood the test of time." He then recommended that the president be elected for life, that the senators be appointed for life, and that the

central government have the authority to appoint governors of the states just as the king of England had been doing.

Apparently it was an eloquent address. Madison wrote in his notes that Hamilton's speech was applauded by all and approved by none. That happens in politics sometimes.

It is interesting to see what the Founders had to say concerning the British Parliament and its monarchical institutions:

Defects of the British System

Wilson: "Great Britain boasts — and she may well boast — of the improvement she has made in politics by the admission of representation; for the improvement is important as far as it goes; but it by no means goes far enough. Is the executive power of Great Britain founded on representation? This is not pretended.

"The judges of Great Britain are appointed by the crown. The judicial authority, therefore, does not depend upon representation, even in its most remote degree.

"Does representation prevail in the legislative department of the British government? Even here it does not predominate, though it may serve as a check.

"The legislature consists of three branches — the king, the lords, and the commons. Of these, only the latter are supposed by the constitution to represent the authority of the people. This short analysis clearly shows to what a narrow corner of the British constitution the principle of representation is confined. I believe it does not extend farther, if so far, in any other government in Europe.

"For the American states were reserved the glory and the happiness of diffusing this vital principle throughout the constituent parts of government. Representation is the chain of communication between the people and those to whom they have committed the exercise of the powers of government. This chain may consist of one or more links, but in all cases it should be sufficiently strong and discernible."[2]

Why America Leaped Ahead of Europe

Pinckney: "In reviewing such of the European states as we are best acquainted with, we may with truth assert that there is but one among the most important [Great Britain] which confirms to its citizens their civil liberties, or provides for the security of private rights. But as if it had been fated that we should be the first perfectly free people the world had ever seen, even the government I have alluded to withholds from a part of its subjects the equal enjoyment of their religious liberties.

"How many thousands of the subjects of Great Britain at this moment labor under civil disabilities, merely on account of their religious persuasions!

"To the liberal and enlightened mind, the rest of Europe affords a melancholy picture of the depravity of human nature, and of the total subversion of those rights, without which we should suppose no people could be happy or content.

"We have been taught here to believe that all power of right belongs to the people; that it flows immediately from them, and is delegated to their officers for the public good; that our rulers are the servants of the people, amenable to their will, and created for their use. How different are the governments of Europe! There, the people are the servants and subjects of their rulers; there, merit and talents have little or no influence; but all the honors and offices of government are

Parliament smacked too much of Ruler's Law for the Founders. They chose to establish a government more directly answerable to the people.

swallowed up by birth, by fortune, or by rank.

"From the European world are no precedents to be drawn for a people who think they are capable of governing themselves. Instead of receiving instruction from them, we may, with pride, affirm that, new as this country is in point of settlement, inexperienced as she must be upon questions of government, she still has read more useful lessons to the old world, she has made them more acquainted with their own rights, than they had been otherwise for centuries.

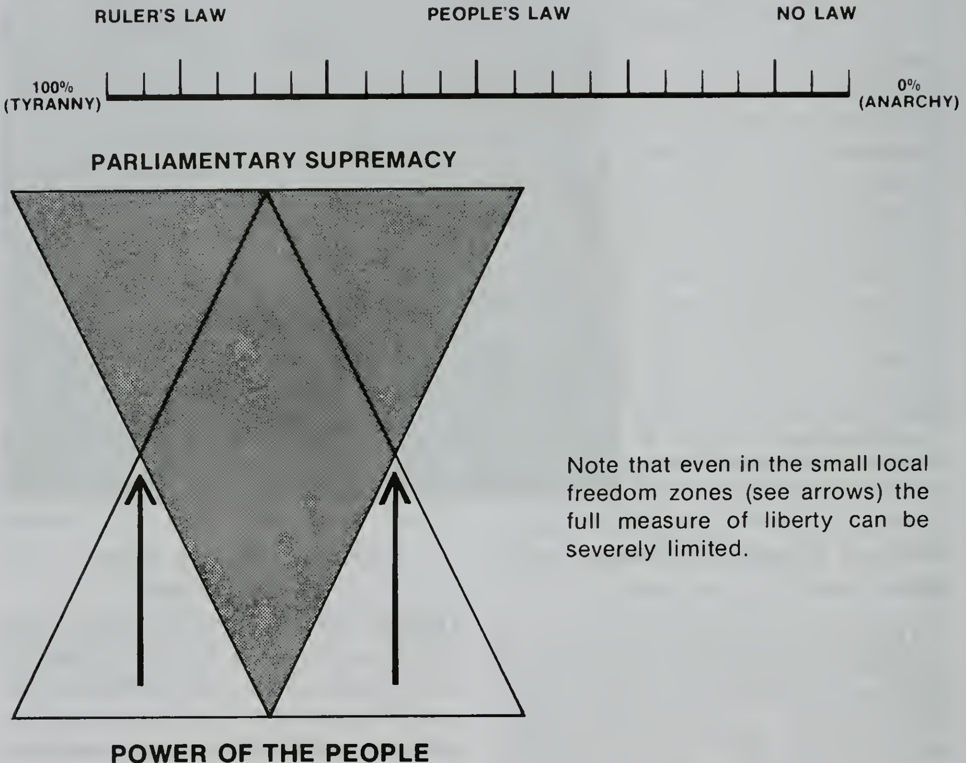
"It is with pride I repeat that, old and experienced as they are, they are indebted to us for light and refinement upon points of all others the most interesting."[3]

Britain Still Too Close to Despotism

Thacher: "This [American] Constitution hath been compared, both by its defenders and opponents, to the British government. In my view of it, there is a great difference. In Britain, the government is said to consist of three forms — monarchy, aristocracy, and democracy; but, in fact, is but a few steps removed from absolute despotism. In the crown is vested the power of adding at pleasure to the second branch; of nominating to all the places of honor and emolument; of purchasing, by its immense revenues, the suffrages of the House of Commons. The voice of the people is but the echo of the king; and their boasted privileges lie entirely at his mercy."[4]

How the Founders Envisioned Britain's Parliamentary Supremacy

It will be immediately seen that the Founders did not consider the British system of legislative or parliamentary supremacy to be the best type of republic. It contained at least as much Ruler's Law as People's Law. Their view might be pictured as follows:

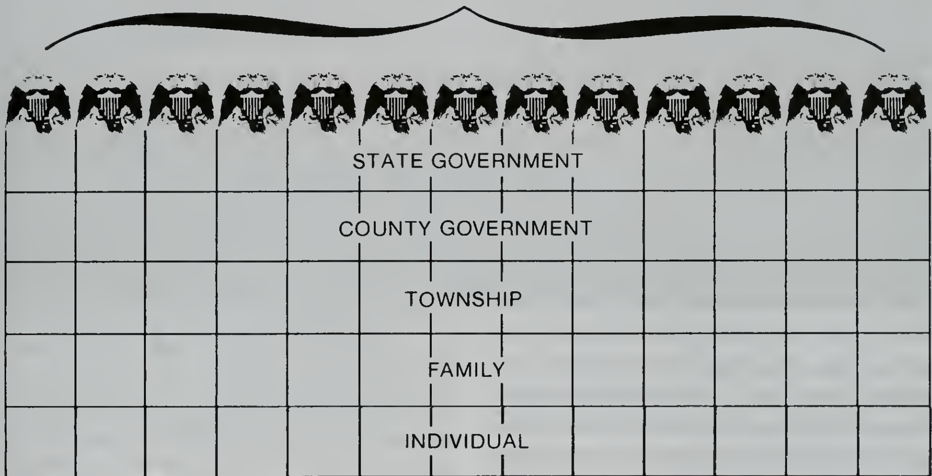


The British parliamentary system was weighted too heavily on the side of Ruler's Law.

The Founders, even as English colonists, claimed all of the rights guaranteed by the Magna Charta, the Petition of Rights, the Habeas Corpus Act, and the English Bill of Rights. However, they had learned through hard experience that these rights are difficult to maintain when the structure of government readily permits abuses. The Founders saw this to be a serious weakness in the British system under parliamentary supremacy.

The Weaknesses of a Confederation of Independent States

The second type of republic examined by the Founders was the uniting of a group of independent, sovereign states into a confederation. In 1776 they had envisioned this as preferable to the British system. Under the Articles of Confederation, their system looked something like this:



Government under the Articles of Confederation lacked a single, powerful directing head.

Failure of Confederations in Europe

The Founders knew their political history and they were well acquainted with the failure of confederated republics in Europe. Nevertheless, they seemed to have felt that somehow they could make it work in the United States. The Founders later admitted they should have known better just from observing the experiments in Holland and Germany. Here is what Alexander Hamilton said about confederated republics:

"The operation of this principle [a confederation of states] appears on the same light in the Dutch republics. They have been obliged to levy taxes by an armed force. In this confederacy, one large province, by its superior wealth and influence, is commonly a match for all the rest; and when they do not comply, the province of Holland is obliged to compel them. It is observed, that the United Provinces have existed a long time; but they have been constantly the sport of their neighbors, and have been supported only by the external pressure of the surrounding powers. The policy of Europe, not the policy of their government, has saved them from dissolution. Besides, the powers of the stadtholder have given energy to the operations of this government, which is not to be found in ours. This prince has a vast personal influence; he has independ-

ent revenues; he commands an army of forty thousand men.

"The German confederacy has also been a perpetual source of wars. They have a diet, like our Congress, who have authority to call for supplies. These calls are never obeyed; and in time of war, the imperial army never takes the field till the enemy are returning from it. The emperor's Austrian dominions, in which he is an absolute prince, alone enable him to make head against the common foe. The members of this confederacy are ever divided and opposed to each other. The king of Prussia is a member; yet he has been constantly in opposition to the emperor. Is this a desirable government?

"I might go more particularly into the discussion of examples, and show that, wherever this fatal principle has prevailed, even as far back as the Lycian and Achaean leagues, as well as the Amphictyonic confederacy, it has proved the destruction of the government.... Weakness in the head has produced resistance in the members; this has been the immediate parent of civil war: auxiliary force has been invited; and foreign power has annihilated their liberties and name. Thus Philip subverted the Amphictyonic, and Rome the Achaean republic."[5]

The American Experience with a Confederated Republic

As we have already seen, the effort to establish a union of the states under the Articles of Confederation was a near disaster. However, this does not mean that they could not have been partially effective if several amendments had been added. The main drawbacks were the lack of the power to tax, the absence of any authority to compel states to comply with assessments, the absence of a single executive, and the absence of a federal judiciary. All of these contributed to the chaos which nearly caused the defeat of the Americans during the Revolutionary War.

In the following quotations we hear the bitter complaints which ultimately led to a constitutional convention and the adoption of a different system.

Why the Articles of Confederation Failed

Madison: "The existing Confederation is founded on principles which are fallacious.... Other confederacies which could be consulted as precedents have been vitiated by the same erroneous principles, and can therefore furnish no other light than that of beacons, which give warning of the course to be shunned, without pointing out that which ought to be pursued. The most that the convention could do in such a situation was to avoid the errors suggested by the past experience of other countries, as well as of our own; and to provide a convenient mode of rectifying their own errors, as future experience may unfold them."[6]

Weakness of Articles Fundamental, Not Incidental

Hamilton: "The evils we experience do not proceed from minute or partial imperfections, but from fundamental errors in the structure of the building, which cannot be amended otherwise than by an alteration in the first principles and main pillars of the fabric.

"The great and radical vice in the construction of the existing Confederation is in the principle of legislation for STATES or governments, in their corporate or collective capacities, and as contradistinguished from the INDIVIDUALS of which they consist.... The United States has an indefinite discretion to make requisitions for men and money; but they have

Under the Articles of Confederation the United States had very little military protection should an enemy attack.

no authority to raise either by regulations extending to the individual citizens of America. The consequence of this is that though in theory their resolutions concerning those objects are laws constitutionally binding on the members of the Union, yet in practice they are mere recommendations which the States observe or disregard at their option."[7]

Under the Articles, United States Not Really a Nation

Wilson: "I stated, on a former occasion, one important advantage; by adopting this [new constitutional] system, we become a *nation;* at present, [under the Articles] we are not one. Can we perform a single national act? Can we do any thing to procure us dignity, or to preserve peace and tranquillity? Can we relieve the distress of our citizens? Can we provide for their welfare or happiness? The powers of our government are mere sound.

"If we offer to treat with a nation, we receive this humiliating answer: 'You cannot, in propriety of language, make a treaty, because you have no power to execute it.' Can we borrow money? There are too many examples of unfortunate creditors existing, both on this and the other side of the Atlantic, to expect success from this expedient. But could we borrow money, we cannot command a fund, to enable us to pay either the principal or interest; for, in instances where our friends have advanced the principal, they have been obliged to advance the interest also, in order to prevent the principal from being annihilated in their hands by depreciation.

"Can we raise an army? The prospect of a war is highly probable. The accounts we receive, by every vessel from Europe, mention that the highest exertions are making in the ports and arsenals of the greatest maritime powers. But whatever the consequence may be, are we to lie supine? We know we are unable, under the Articles of Confederation, to exert ourselves; and shall we continue so, until a

stroke be made on our commerce, or we see the debarkation of a hostile army on our unprotected shores? Who will guaranty that our property will not be laid waste, that our towns will not be put under contribution, by a small naval force, and subjected to all the horror and devastation of war? May not this be done without opposition, at least effectual opposition, in the present situation of our country? There may be safety over the Appalachian Mountains, but there can be none on our sea-coast. With what propriety can we hope our flag will be respected, while we have not a single gun to fire in its defence?

"Can we expect to make internal improvement, or accomplish any of those great national objects which I formerly alluded to, when we cannot find money to remove a single rock out of a river?"[8]

The World Anxiously Waited For Americans to Find a Solution

Wilson: "On the glorious conclusion of our conflict with Britain, what high expectations were formed concerning us by others! What high expectations did we form concerning ourselves! Have those expectations been realized? No. What has been the cause? Did our citizens lose their perseverance and magnanimity? No. Did they become insensible of resentment and indignation at any high-handed attempt that might have been made to injure or enslave them? No. What, then, has been the cause? The truth is, we dreaded danger only on one side: this we manfully repelled. But, on another side, danger, not less formidable but more insidious, stole in upon us; and our unsuspicious tempers were not sufficiently attentive either to its approach or to its operations. Those whom foreign strength could not overpower, have well nigh become the victims of internal anarchy....

"We now see the great end which they proposed to accomplish. It was to frame, for the consideration of their constituents, one federal and national constitution — a constitution that would produce the advantages of good, and prevent the inconveniences of bad government — a constitution whose beneficence and energy would pervade the whole Union, and bind and embrace the interests of every part — a constitution that would insure peace, freedom, and happiness, to the states and people of America."[9]

The American Invention Gradually Emerges

Great Britain had made her major contribution by reducing the autocratic powers of the king and forcing him to share

Washington's presiding influence seemed to be a major factor in the success of the Convention.

his power with the Parliament. However, the people did not gain the advantages they had expected because the Parliament then became supreme and, to some extent, autocratic. The American Founders thereupon determined to drive the pilings for a firm and sound government clear down where they belonged—among the people. To accomplish this they had to go through four steps:

1. Clearly enunciate the fundamental principle that the power to govern rests in the people. (This was done in the first two paragraphs of the Declaration of Independence.)
2. Although serving as delegates appointed by the state legislatures, they had to propose a government that would not become operative unless approved by the people.
3. To achieve this, they proposed to send the constitutional draft back to the Congress, and if it was approved by them, to have it submitted to the ratifying conventions elected by the people (not the legislatures) in each of the states.
4. When ratified, the Constitution would become the voice of the people (not the confederated sovereign states), and would thereby make the voice of the people the supreme law of the land.

The Founders structured the Constitution so that the doctrines of legislative supremacy (as applied in England) and state supremacy (as applied to the Netherlands, Germany, and the American Articles of Confederation) would be replaced by the doctrine of "constitutional supremacy," a brand new invention.

Transferring the Government from the States to the People

This four-step process which we have just described was explained in great detail during the ratification debates. For example:

MacLaine: "The gentlemen who framed it were not the representatives of the people. They ... were delegated by states.... They did not think that they were the people, but intended it for the people, at a future day. The sanction of the state legislatures was in some degree necessary. It was to be submitted by the legislatures to the people; so that, when it is adopted, it is the act of the people."[10]

Pendleton: "This Constitution was transmitted to Congress by that Convention; by the Congress transmitted to our legislature; by them recommended to the people; the people have sent us hither to determine whether this government be a proper one or not."[11]

W. Davie: "The Confederation derived its sole support from the state legislatures. This rendered it weak and ineffectual. It was therefore necessary that the foundations of this government should be laid on the broad basis of the people. Yet the state governments are the pillars upon which this government is extended over such an immense territory, and are essential to its existence."[12]

Certain Powers to the Federal Government, Others to the States

The new Constitution presupposes the complete restitution of all political power to the people, with a subsequent redistribution of certain powers to the states and certain powers to the federal government.

This explanation gives particular significance to the words of James Madison when he emphasized the relative amount of responsibility allocated to each level of government:

"The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the state governments are numerous and indefinite. The former will be exercised principally on external objects as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several states will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties and prosperity of the state."[13]

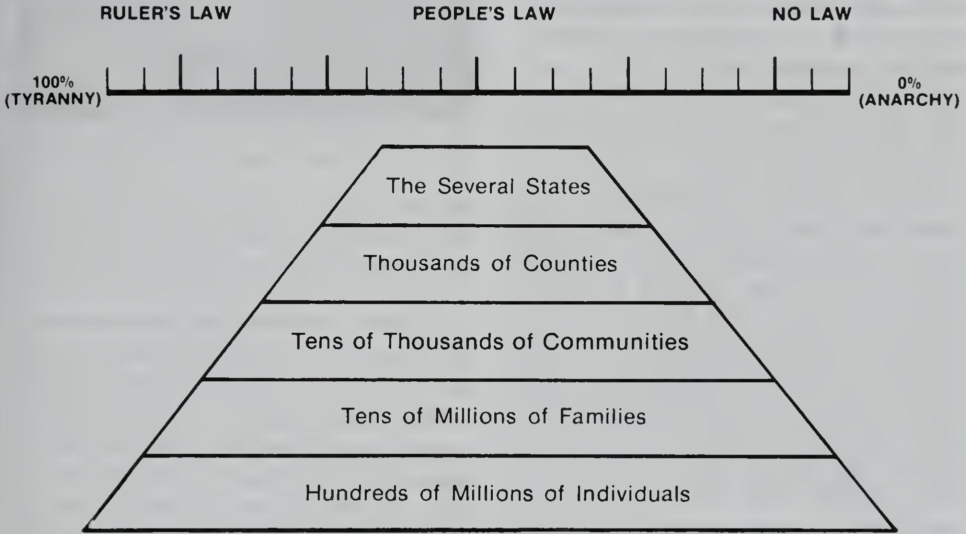
Of course the people were accustomed to thinking of the states as the sovereign source of all political power, but the Founders wanted to educate the people to understand that they themselves are the source of all such power. James Wilson of Pennsylvania explained it as follows:

"It is objected to this system, that under it there is no sovereignty left in the state governments.... I should be very glad to know at what period the state governments became possessed of the supreme power. On the principle...of this Constitution...the supreme power resides in the people. If they choose to indulge a part of their sovereign power to be exercised by the state governments, they may. If they have done it, the states were right in exercising it; but if they think it no longer safe or convenient, they will resume it, or make a new distribution, more likely to be productive of that good which ought to be our constant aim.

"The powers both of the general government and the state governments, under this system, are acknowledged to be so many emanations of power from the people."[14]

People's Constitution Provides Vertical Separation of Powers

The purpose of the Founders was to assign to each level of government that service which it could perform the most efficiently and the most economically. There was a remarkable rationale behind the whole system. It went back to the "ancient principles." The vertical separation of powers among the states might be graphically portrayed as follows:



The state governments provided for a vertical separation of powers even before the Constitution was written, but a federal "capstone" was needed to hold the system at the balanced center of the political spectrum.

James Wilson comments on this illustration of the pyramid as follows:

"A free government has often been compared to a pyramid. This allusion is made with peculiar propriety in the system before you; it is laid on the broad basis of the people; its powers gradually rise, while they are confined, in proportion as they ascend, until they end in that most permanent of all forms. When you examine all its parts, they will invariably be found to preserve that essential mark of free governments — a chain of connection with the people.

"Such, sir, is the nature of this system of government."[15]

Assign Each Level of Government That Which It Does Best

The Founders emphasized repeatedly that the design of the Constitution was to distribute the authority of governmental service to that level where a particular function could be the most efficiently administered and at the least expense.

Jefferson: "The way to have good and safe government is not to trust it all to one, but to divide it among the many, distributing to everyone exactly the functions he is competent to. Let the national government be entrusted with the defense of the nation, and its foreign and

federal relations; the state governments with the civil rights, laws, police, and administration of what concerns the state generally; the counties with the local concerns of the counties; and each ward direct the interests within itself. It is by dividing and subdividing these republics from the great national one down through all its subordinations until it ends in the administration of every man's farm by himself, by placing under everyone what his own eye may superintend, that all will be done for the best."[16]

"It is not by the consolidation or concentration of powers, but by their distribution that good government is effected. Were not this great country already divided into states, that division must be made, that each might do for itself what concerns itself directly, and what it can so much better do than a distant authority. Every state again is divided into counties, each to take care of what lies within its local bounds; each county again into townships or wards, to manage minuter details; and every ward into farms, to be governed each by its individual proprietor.... It is by this partition of cares, descending in gradation from general to particular, that the mass of human affairs may be best managed for the good and prosperity of all."[17]

Strong Local Self-Government to Guard Against Corruption

Jefferson: "The article nearest my heart is the division of counties into wards. These will be pure and elementary republics, the sum of all which, taken together, composes the state, and will make of the whole a true democracy as to the business of the wards, which is that of nearest and daily concern. The affairs of the larger sections, of counties, of states, and of the Union, not admitting personal

The new Constitution encouraged self-determination, allowing people to dream dreams of goals fulfilled in a rugged new land.

transactions by the people, will be delegated to agents elected by themselves; and representation will thus be substituted where personal action becomes impracticable. Yet even over these representative organs, should they become corrupt and perverted, the division into wards, constituting the people ... a regularly organized power, enables them by that organization to crush, regularly and peaceably, the usurpations of their unfaithful agents, and rescues them from the dreadful necessity of doing it insurrectionally. In this way we shall be as republican as a large society can be, and secure the continuance of purity in our government by the salutary, peaceable, and regular control of the people."[18]

From this it will be seen that the Founders did not perceive the states to be administrative departments of the national government. They looked upon the states as exclusively assigned to handle certain internal matters which were no business whatever of the federal government. On the other hand, they felt there were certain powers which should be preempted to the national government and that in those areas the states should not be allowed to interfere. Let us look briefly at each level of assigned responsibility given to the individual states.

The Individual

The Founders perceived "the people" as individuals with the unalienable right to exercise their free agency in governing their own affairs so long as it did not impose on the rights of others. They felt the individual has both the right and the responsibility to solve most of the problems relating to work, play, associations, creature comforts, education, acquisition and disposition of property, and the effort needed to make a person self-sustaining. As a member of society, the individual has a right to a voice and a vote. He or she has an inherent right to enjoy all of the general privileges and prerogatives enjoyed by the other members of society.

The Family

On the second level is the family, which the Founders considered to be the most important unit of organized society. It is within the family circle that individuals tend to find greater satisfaction and self-realization than in any other segment of the community, state, or nation. The family is granted exclusive and sovereign rights which cannot be invaded by any other branch of government unless:

1. There is evidence of extended and extreme neglect of children.
2. There is evidence of criminal abuse.
3. The family residence is being used for criminal purposes.

At the same time the family has inescapable responsibilities. Parents are responsible for the conduct of their children, the education of their children, the religious training of their children, and the responsibility of raising children to be morally competent, self-sustaining adults.

Social workers and state officials may not agree with the religious training, choice of schools, philosophy of childrearing, or other details in the life of a family, but the doctrine of *parens patriae* (the right of the state to intervene) does not arise unless one or more of the above situations is present.

The Founders considered the family to be the most important unit of organized society.

Government on the community level is vital to the effective application of the Constitution.

The Community

There are a number of things which a community of families can do better than an individual family. This is the basis for the corporate community. It has the responsibility to provide roads, schools, water, police protection, city courts to handle misdemeanors, etc. It also has the power to tax for the purpose of providing these specific services.

The County

There are a number of activities which a group of communities can handle collectively with more efficiency than as individual communities. These include the prosecution of serious crimes or minor crimes in the rural area, the providing of a secure long-term county jail (for prisoners serving less than a year); providing county roads, bridges, and drainage systems; providing rural schools, rural police services; levying and collecting taxes based on the assessed value of property; issuing licenses for fishing and hunting as well as marriages; keeping records of deeds, births, deaths, and marriages; conducting elections, caring for the needy, and protecting public health.

The State

The state is the sovereign entity of a specified region which can function more effectively for all of the communities, counties, and people of the state than they could do for themselves. The state has the authority to tax, regulate commerce, establish courts, define crime and prescribe punishment, establish and maintain public schools, build roads and bridges, and supervise intrastate waterways. The state can also pass laws to protect the health, safety, and morals of its people. Moral problems include such matters as liquor, gambling, drugs, and prostitution.

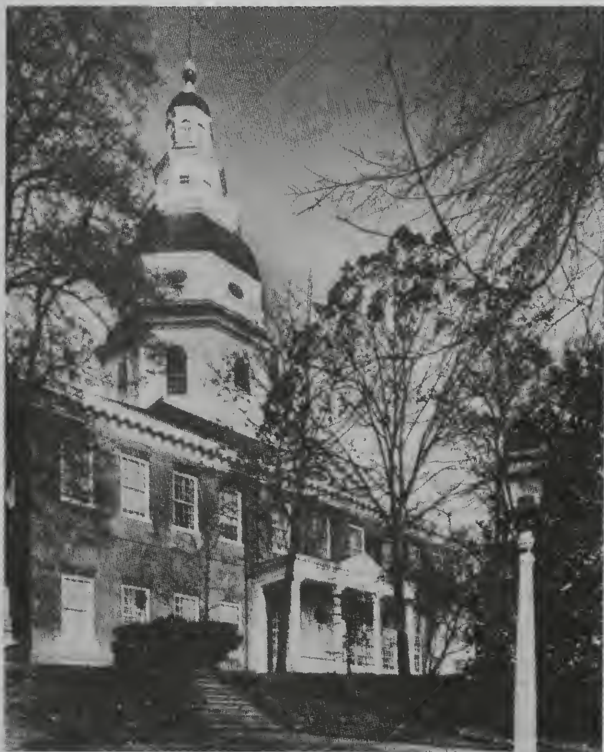
However, the state can only intervene where *public* morality is involved. Private morality is a matter between a person and his conscience. But there was no margin of allowance for immorality between "consenting adults" or for personal misconduct affecting any member of the family or society. The moment a person's behavior violates the legal standards established by the community, that behavior falls under the restrictions of *public* morality.

All of this fits within the natural parameters of republican principles. All residents of a community are subject to the standards approved by a majority of the people or their representatives. Otherwise, orderly government would be impossible.

In his *Commentaries,* Sir William Blackstone describes the distinction between private and public morals. He says:

"No matter how abandoned may be a man's principles, or how vicious his practice, provided he keeps his wickedness to himself, and does not violate public decency, he is out of the reach of human laws. But if he makes his vices public, then they become by his bad example, of pernicious effect to society, and it is the business of human laws to correct them."

The Founders set up the states so that they were a projection of the will of the people, not an auxiliary branch of the national government. In their area of assigned responsibilities, their power was plenary, sovereign, and exclusive. In a very narrow area there was joint responsibility with the federal government.



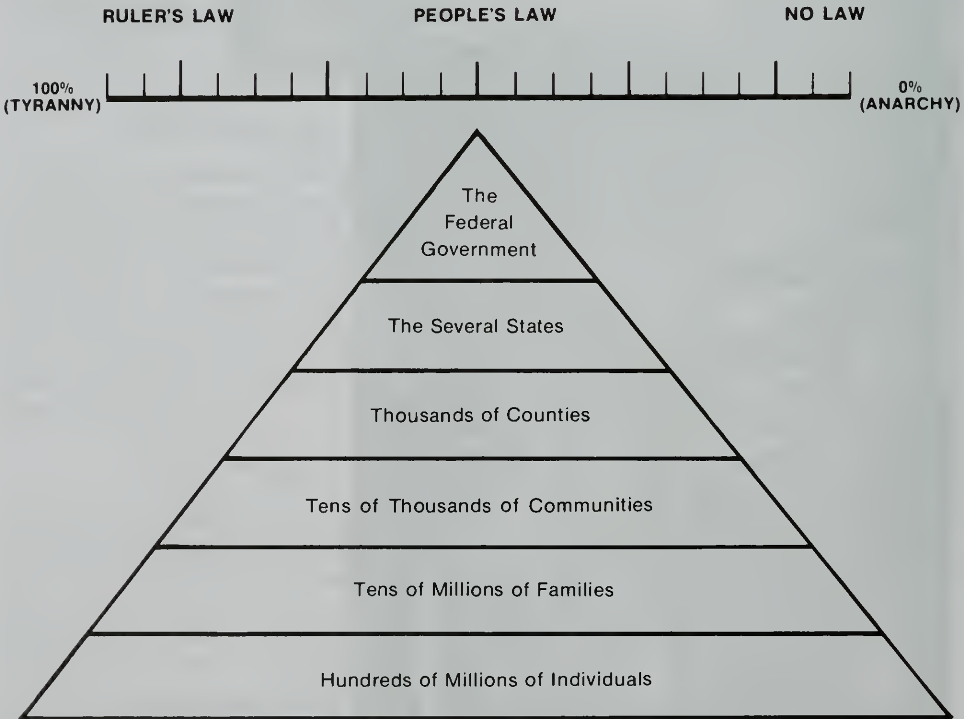
The Maryland state house, where Maryland ratified the Constitution. The Founders spoke explicitly of the powers and limitations of the states.

What Powers Were Delegated Exclusively to the National Government?

The powers allocated to the national government were highly important but carefully enumerated. The Constitution lists only twenty. These are the powers relating to foreign affairs, war, peace, national security, managing interstate commerce, federal taxes, naturalization, patents, bankruptcy laws, federal lands and property, handling federal finance, coining of money, fixing weights and measures, establishing post offices, setting up federal courts, and handling crimes on the high seas or violations of the law of nations.

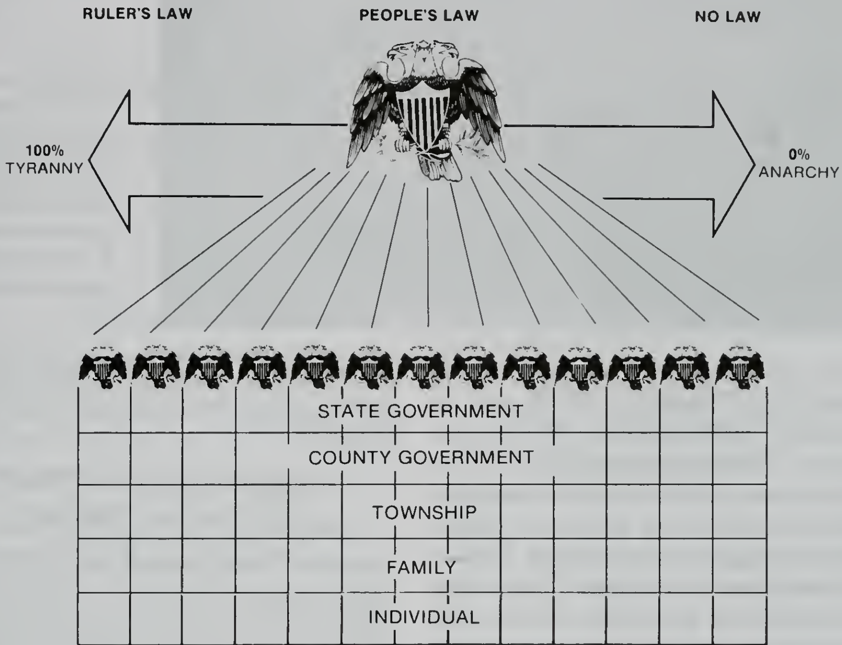
The Founders feared that federal officials and federal agencies would try to invade or control the activities assigned to the states. They therefore included the Tenth Amendment to remind the federal government that it had no authority in any area not specifically described in the Constitution.

With the Constitution fixing chains on the branches of government to hold them in place, the Founders put the federal government over the several states to serve them as its coordinator in the area of "national" affairs. As a capstone on the new system it might be portrayed as follows:



The Constitution provided a federal "capstone" to maintain the American system of People's Law.

However, as the coordinator in "national" affairs for all of the states, the federal government, working through People's Law, has the power to reach down to the states in the specified area. That federal-state relationship might be portrayed as follows:



Vertical separation of powers allows the federal government to reach down to the states in specified areas.

Here are some of the comments of the Founders concerning the vertical separation of powers:

Dual Citizenship

Iredell: "When this government is adopted, there will be two governments to which we shall owe obedience — to the government of the Union, in certain defined cases — to our own state government in every other case."[19]

Organizing According to the Ancient Principles

Jefferson: "Our citizens have wisely formed themselves into one nation as to others, and several states as among themselves. To the united nation belong our external and mutual relations; to each state severally the care of our persons, our property, our reputation and religious freedom. This wise distribution, if carefully preserved, will prove, I trust from example, that while smaller governments are better adapted to the ordinary objects of society, larger confederations more effectually secure independence and the preservation of republican government."[20]

Difference Between Federal and State Governments

Hamilton: "The great leading objects of the federal government, in which revenue is concerned, are to maintain domestic peace, and provide for the common

Under the Constitution, the federal government is responsible to protect the states against foreign invasion. Shown is Faneuil Hall in Boston, which was occupied by the British in the early days of the Revolutionary War.

defense. In these are comprehended the regulation of commerce, the support of armies and navies, and of the civil administration. This principle assented to, let us inquire what are the objects of the state governments. Have they to provide against foreign invasion? Have they to maintain fleets and armies? Have they any concern in the regulation of commerce, the procuring alliances, or forming treaties of peace? No. Their objects are merely civil and domestic — to support the legislative establishment, and to provide for the administration of the laws."[21]

State Concerns Differ from Concerns of Congress

Wilson: "In the cases of state legislatures. In them there ought to be a representation sufficient to declare the situation of every county, town, and district; and if of every individual, so much the better, because their legislative powers extend to the particular interest and convenience of each. But in the general government, its objects are enumerated, and are not confined, in their causes or operations, to a county, or even to a single state. No one power is of such a nature as to require the minute knowledge of situations and circumstances necessary in state governments possessed of general legislative authority."[22]

Congress Concerned Only with National Welfare

Nicholas: "Congress will superintend the great national interests of the Union. Local concerns are left to the state legislatures. They cannot extend their influence or agency to any objects but those of a general nature."[23]

Federal Government Has No Business in Local Matters

Wilson: "We find, on an examination of all its parts, that the objects of this government are such as extend beyond the bounds of the particular states. This is the line of distinction between this government and the particular state governments....

"Now, when we come to consider the objects of this government, we shall find that, in making our choice of a proper character to be a member of the House of Representatives, we ought to fix on one whose mind and heart are enlarged; who possesses a general knowledge of the interests of America, and a disposition to

make use of that knowledge for the advantage and welfare of his country. It belongs not to this government to make an act for a particular township, county, or state."[24]

Internal Affairs of States Under State Jurisdiction

Corbin: "The extent of the United States cannot render this government oppressive. The powers of the general government are only of a general nature, and their object is to protect, defend, and strengthen the United States; but the internal administration of government is left to the state legislatures, who exclusively retain such powers as will give the states the advantages of small republics, without the danger commonly attendant on the weakness of such governments."[25]

State and Federal Legislatures Have Separate Provinces

Ellsworth: "But, says the honorable objector, two...legislative powers...cannot legislate in the same place. I ask, Why can they not?...I grant that both cannot legislate upon the same object at the same time, and carry into effect laws which are contrary to each other. But the Constitution excludes every thing of this kind. Each legislature has its province; their limits may be distinguished.... This very spot where we now are is a city. It has complete legislative, judicial, and executive powers; it is a complete state in miniature. Yet it breeds no confusion, it makes no schism. The city has not eaten up the state, nor the state the city."[26]

Few Responsibilities Assigned Federal Government

Madison: "The powers of the general government relate to external objects, and are but few. But the powers in the states relate to those great objects which immediately concern the prosperity of the people."[27]

Congress Not Given Any "General Powers"

Hamilton: "The plan of the convention declares that the power of Congress, or, in other words, of the *national legislature,* shall extend to certain enumerated cases. This specification of particulars evidently excludes all pretension to a general legislative authority, because an affirmative grant of special powers would be absurd as well as useless if a general authority was intended."[28]

States Have Power to Protect Themselves from Federal Usurpation

Wilson: "But, Sir, it has been intimated that the design of the federal convention was to absorb the state governments. This would introduce a strange doctrine indeed, that one body should seek the destruction of another, upon which its own preservation depends, or that the creature should eat up and consume the creator. The truth is, Sir, that the framers of this system were particularly anxious, and their work demonstrates their anxiety, to preserve the state governments unimpaired—it was their favorite object; and, perhaps, however proper it might be in itself, it is more difficult to defend the plan on account of the excessive caution used in that respect than from any other objection that has been offered here or elsewhere. Hence, we have seen each state, without regard to their comparative importance, entitled to an equal representation in the senate, and a clause has been introduced which enables two-thirds of the state legislature at any time to propose and effectuate alterations in the general system."[29]

No Federal Authority over Agriculture

Hamilton: "The administration of private justice between the citizens of the same State, the supervision of agriculture and of other concerns of a similar nature, all those things, in short, which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction."[30]

What Provisions Were Made for the Horizontal Separation of Powers?

After the Founders had decided on the vertical separation of powers they set about structuring what we might refer to as the three-headed eagle, which symbolizes the horizontal separation of powers.

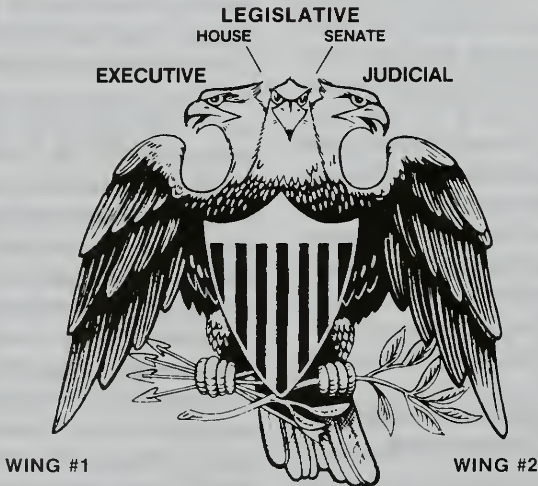
Actually, the functions of government consist of making the law, administering the law, and enforcing the law—in other words, the legislature, the executive, and the judiciary. For the first time in modern history, the Founders divided these three branches into separate heads.

Then they made them function through a single neck so that even though each head was independent, it could not function without the consent of one or both of the other heads. Graphically, the Founders' concept might be illustrated as shown below.

It will be observed that the legislative head has two eyes. One eye is the Senate, which was originally designed to look at problems and legislation from the standpoint of the individual states and the property or welfare of that state. The other eye was designed to focus on the needs of the people themselves, who are citizens of the state but have a different perspective from that of the state itself. Both of these eyes must agree or see "eye to eye" before a piece of legislation can be approved and sent to the President for his signature.

Problem Solving

The two wings of the eagle might be used to illustrate the way governments should solve problems. This must be done in a way that permits the eagle to remain



The three branches of government can be pictured as a three-headed eagle. Its two wings represent the two ways of approaching problems: What needs to be done? What does the government have authority to do?

in the balanced center of the political spectrum. Four points should be considered in connection with this process. The two wings of the eagle help to illustrate these points:

1. Wing No. 1 might be referred to as the problem-solving wing or the wing of compassion. Those who function through this dimension of the system are sensitive to the unfulfilled needs of the people. They dream of elaborate plans to solve these problems.
2. Wing No. 2 has the responsibility of conserving the nation's resources and the people's freedom. Its function is to analyze the programs of Wing No. 1 with two questions: First, can we afford it? Second, what will the proposed plan do to the rights and individual freedom of the people?
3. If either of these wings fails to perform its job, the American eagle will drift toward anarchy or tyranny. For example, if Wing No. 1 becomes infatuated with the idea of solving all the problems of the nation regardless of the cost, and Wing No. 2 fails to bring its power into play to sober the problem-solvers with a more realistic approach, the eagle will spin off toward the left, which is tyranny. On the other hand, if Wing No. 1 fails to see the problems which need solving and Wing No. 2 refuses to solve problems in an effort to save money, or to preserve the status quo, then the machinery of government loses its credibility and the eagle drifts over toward the right, where the people decide to take matters into their own hands. This can eventually disintegrate into anarchy, with a deep credibility gap developing between the people and their government.
4. However, if both of these wings fulfill their assigned functions, the American eagle can fly straighter and higher than any civilization in the history of the world. This is what the Founders envisioned as they finally concluded the Constitutional Convention.

Here are some of the comments of the Founders that further explain these issues:

Importance of Maintaining the Horizontal Separation of Power

Dawson: "That the legislative, executive, and judicial powers should be separate and distinct, in all free governments, is a political fact so well established, that I presume I shall not be thought arrogant, when I affirm that no country ever did, or ever can, long remain free, where they are blended. All the states have been in this sentiment when they formed their state constitutions, and therefore have guarded against the danger."[31]

Jefferson: "If the three powers [i.e., legislative, executive, and judiciary] maintain their mutual independence [of] each other, [our government] may last long; but not so if either can assume the authorities of the other."[32]

Don't Allow Power to Concentrate in Washington

Jefferson: "When all government, domestic and foreign, in little as in great things, shall be drawn to Washington as the center of all power, it will render powerless the checks provided of one government on another and will become as venal and oppressive as the government from which we separated."[33]

Checks and Balances to Peacefully Correct the Usurpation or Abuse of Power

The Founders had observed that where there is monarchical supremacy or legislative supremacy there are no adequate

checks and balances to peacefully rectify abuses and the usurpation of power. The Founders therefore carefully structured the Constitution so that there were built-in peaceful devices for the automatic correction of imbalances in the power structure which might develop through usurpation or abuses. For example, there are seventeen checks between the legislative, executive, and judicial branches of the federal government. There are also checks between the national government and the states. This was achieved by balancing power against power. In other words, if one head of the eagle became obstreperous, the other two heads had the POWER to individually or unitedly combine against the offender. At the same time the power assigned to each head could not be used unilaterally to abuse or offend without coming under the reprisals available to the other two heads.

It was truly an ingenious arrangement and works effectively so long as the high offices of government are occupied by individuals who have studied the Founders' game plan and know the book of instructions.

Here is what several of the Founders had to say about this important machinery of checks and balances:

Eventual Abuses Anticipated

Grayson: "Power ought to have such checks and limitations as to prevent bad men from abusing it. It ought to be granted on a supposition that men will be bad; for it may be eventually so."[34]

Checks Required to Cope with Weaknesses of Human Nature

Madison: "But what is government itself but the greatest of all reflections on human nature? If men were angels, no

James Madison said, "If men were angels, no government would be necessary."

government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."[35]

Checks and Balances Skillfully Contrived

Hamilton: "In the form of this government, and in the mode of legislation, you find all the checks which the greatest politicians and the best writers have ever conceived. What more can reasonable men desire? Is there any one branch in which the whole legislative and executive powers are lodged? No. The legislative authority is lodged in three distinct branches, properly *balanced;* the executive is divided between two branches; and the judicial is

still reserved for an independent body, who hold their office during good behavior. This organization is so complex, so skillfully contrived, that it is next to impossible that an impolitic or wicked measure should pass the scrutiny with success....

"We have heard a great deal of the sword and the purse. It is said our liberties are in danger, if both are possessed by Congress. Let us see what is the true meaning of this maxim, which has been so much used, and so little understood. It is, that you shall not place these powers either in the legislative or executive, singly; neither one nor the other shall have both, because this would destroy that division of powers on which political liberty is founded, and would furnish one body with all the means of tyranny. But where the purse is lodged in one branch, and the sword in another, there can be no danger."[36]

Checks Reduce Risk of Abuse

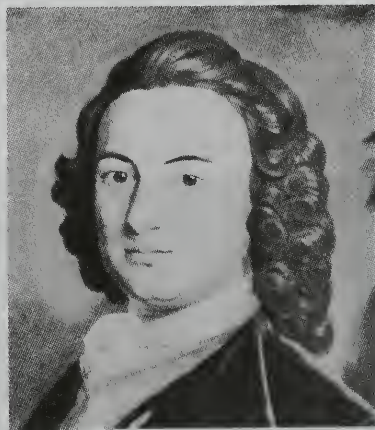
Bowdoin: "It will be, and has been said, this great power may be abused, and, instead of protecting, may be employed by Congress in oppressing, their constituents. A possibility of abuse, as it may be affirmed of all delegated power whatever, is by itself no sufficient reason for withholding the delegation. If it were a sufficient one, no power could be delegated; nor could government of any sort subsist. The possibility, however, should make us careful, that, in all delegations of importance, like the one contained in the proposed Constitution, there should be such checks provided as would not frustrate the end and intention of delegating the power, but would, as far as it could be safely done, prevent the abuse of it; and such *checks* are provided in the Constitution. Some of them were mentioned the last evening by one of my worthy colleagues; but I shall here exhibit all of them in one view.

"The two capital departments of government, the legislative and executive, in which the delegated power resides, consisting of the President, Vice-President, Senate and Representatives, are directly, and by the respective legislatures and delegates, chosen by the people.

"The President, and also the Vice-President, when acting as President, before they enter on the execution of the office, shall each solemnly swear or affirm, that he will faithfully execute the office of President of the United States, and will, to the best of his ability, preserve, protect, and defend, the Constitution of the United States.

"The senators and representatives before mentioned, and the members of the state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this Constitution.

"The President and Vice-President, and all civil officers of the United States, shall be removed from office, on impeachment



James Bowdoin

for, and conviction of, treason, bribery, or other high crimes or misdemeanors.

"No senator or representative shall, during the time for which he was elected, be appointed to any civil office, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house, during his continuance in office.

"No title of nobility shall be granted by the United States, or by any particular state; and no person holding any office of profit or trust under the United States shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

"The United States shall guaranty to every state in this Union a republican form of government, and shall protect each of them against invasion and domestic violence.

"To these great checks may be added several other very essential ones, as, the negative which each house has upon the acts of the other; the disapproving power of the President, which subjects those acts to a revision by the two houses, and to a final negative, unless two thirds of each house shall agree to pass the returned acts, notwithstanding the President's objections; the printing the journals of each house, containing their joint and respective proceedings; and the publishing, from time to time, a regular statement and account of receipts and expenditures of all public money, none of which shall be drawn from the treasury but in consequence of appropriations made by law.

"All these checks and precautions, provided in the Constitution, must, in a great measure, prevent an abuse of power, at least in all flagrant instances, even if Congress should consist wholly of men who were guided by no other principle than their own interest. Under the influence of such checks, this would compel them to conduct which, in the general, would answer the intention of the Constitution. But the presumption is — and, if the people duly attend to the objects of their choice, it would be realized — that the President of the United States and the members of Congress would, for the most part, be men, not only of ability, but of a good moral character; in which case, an abuse of power is not to be apprehended, nor any error in the government, but such as every human institution is subject to."[37]

Common Law Jury Final Protection Against Abuse

Parsons: "An act of usurpation is not obligatory; it is not law; and any man may

The Founders established the common law jury as a protection against governmental abuse of authority. Even though juries are human and fallible, as this artist depicts, they still provide the best system possible.

be justified in his resistance. Let him be considered as a criminal by the general government, yet only his own fellow-citizens can convict him; they are his jury, and if they pronounce him innocent, not all the powers of Congress can hurt him; and innocent they certainly will pronounce him, if the supposed law he resisted was an act of usurpation."[38]

Founders Create a Combination of "Mixed Government"

As we have pointed out elsewhere, a sound government is a mixture of three essential elements. First is the need for the "one"—a single person—to be given the power in time of war or other emergency to speak for the whole people with one voice. Then there is the need for the protection of the land and wealth which provides security and employment for the majority of the people. Wealth is usually in the hands of "the few"—an aristocracy of sorts—and they need to be represented in government. Then there is the need to represent "the many," who have their own interests, both individually and collectively.

For centuries political philosophers attempted to engineer some system of political structure which would give a balanced voice to all three of these groups. The Americans finally achieved it— for the first time in history.

Charles Pinckney of South Carolina described the danger of having any one of these three groups in power. Although they all have their place, there needs to be a balance between them insofar as power is concerned. He said:

"One of the best political and moral writers[39] I have met with, enumerates three principal forms of government, which, he says, are to be regarded rather as the simple forms....

"First, *despotism,* or absolute monarchy, where the legislature is in a single person.

"Second, an *aristocracy,* where the legislature is in a select assembly, the members of which either fill up, by election, the vacancies in their own body, or succeed to it by inheritance, property, tenure of lands, or in respect of some personal right or qualification.

"Third, a *republic,* where the people at large, either collectively or by representation, form the legislature.

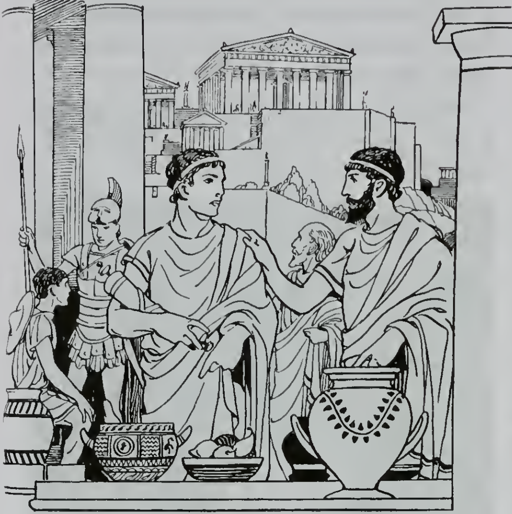
Rather than allowing for a monarch, who could bear total sway over a burdened people, the Founders created a limited presidency.

Monarchy

"The separate advantages of monarchy are unity of council, decision, secrecy, and dispatch; the military strength and energy resulting from these qualities of government; the exclusion of popular and aristocratical contentions; the preventing, by a known rule of succession, all competition for the supreme power, thereby repressing the dangerous hopes and intrigues of aspiring citizens.

"The dangers of a monarchy are tyranny, expense, exactions, military dominations, unnecessary wars, ignorance, in the

governors, of the interest and accommodation of all people, and a consequent deficiency of salutary regulations; want of constancy and uniformity in the rules of government, and, proceeding from thence, insecurity of persons and property.



Many cultures have allowed a ruling aristocracy—but the Founders knew a republic was much closer to People's Law.

Aristocracy

"The separate advantage of an aristocracy is the wisdom that may be expected from experience and education. A permanent council naturally possesses experience, and the members will always be educated with a view to the stations they are destined by their birth to occupy.

"The mischiefs of an aristocracy are dissensions in the ruling orders of the state; an oppression of the lower orders by the privilege of the higher, and by laws partial to the separate interests of the lawmakers.

Republic or People's Assembly

"The advantages of a republic are liberty, exemption from needless restrictions, equal laws, public spirit, averseness to war, frugality, above all, the opportunities afforded, to men of every description, of producing their abilities and counsels to public observation, and the exciting to the service of the commonwealth the faculties of its best citizens.

"The evils of a republic are dissensions, tumults, faction, the attempts of ambitious citizens to possess power, the confusion and clamor which are the inevitable consequences of propounding questions of state to the discussion of large popular assemblies, the delay and disclosure of the public councils, and too often the imbecility of the laws.

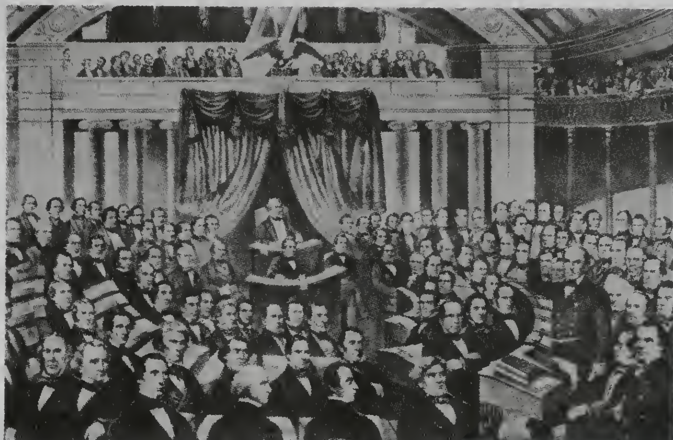
America a "Mixed" Formula of Government

"A mixed government is composed by the combination of two or more of the simple forms above described; and in whatever proportion each form enters into the constitution of government, in the same proportion may both the advantages and evils which have been attributed to that form be expected.

"The citizens of the United States would reprobate, with indignation, the idea of a monarchy. But the essential qualities of a monarchy — unity of council, vigor, secrecy, and dispatch—are qualities essential in every government.

The President

"While, therefore, we have reserved to the people, the fountain of all power, the periodical election of their first magistrate — while we have defined his powers, and bound them to such limits as will effectually prevent his usurping authorities dangerous to the general welfare — we have, at the same time, endeavored to infuse into this department that degree of vigor which will enable the President to execute the laws with energy and dispatch.



The Senate was designed to help the nation enjoy the benefits of an aristocracy without bringing its abuses.

The Senate

"By constructing the Senate upon rotative principles, we have removed, as will be shown upon another occasion, all danger of an aristocratic influence; while, by electing the members for six years, we hope we have given to this part of the system all the advantages of an aristocracy —wisdom, experience, and a consistency of measures.

The House

"The House of Representatives, in which the people of the Union are proportionably represented, are to be biennially elected by them. Those appointments are sufficiently short to render the member as dependent as he ought to be upon his constituents.

"They are the moving-spring of the system. With them all grants of money are to originate: on them depend the wars we shall be engaged in, the fleets and armies we shall raise and support, the salaries we shall pay; in short, on them depend the appropriations of money, and consequently all the arrangements of government. With this powerful influence of the purse, they will be always able to restrain the usurpations of the other departments, while their own licentiousness will, in its turn, be checked."[40]

An Expanding Republic

One of the leading aspirations of the Founders was the expansion of a federal republic under constitutional supremacy which would eventually provide the means by which every people on the face of the earth could combine together for freedom, prosperity, and peace. They did not envision a union of nations half slave and half free. Their concept would be similar to a union of states where every state is guaranteed a republican system of representative government. This would disallow nations with only one political party, or with a military dictatorship (unless it were for a brief time to put down an insurrection). Each member of this union would have a voice and a vote, and the purpose of the union would be to work for their united, as well as one another's, mutual welfare.

The Founders knew that once a major coalition of free nations combined to promote their security and prosperity, it would be so appealing to other nations that the trend would be toward the "eighth step," which we shall discuss in a moment.

The Founders envisioned that the principles of the Constitution could eventually bless all the peoples of the earth.

Constitution Contemplated for Large Portion of the Globe

Here is the way James Wilson described this hope for the future:

"To form a good system of government for a single city or state, however limited as to territory, or inconsiderable as to numbers, has been thought to require the strongest efforts of human genius. With what conscious diffidence, then, must the members of the Convention have revolved in their minds the immense undertaking which was before them.

"Their views could not be confined to a small or a single community, but were expanded to a great number of states; several of which contain an extent of territory, and resources of population, equal to those of some of the most respectable kingdoms on the other side of the Atlantic. Nor were even these the only objects to be comprehended within their deliberations. Numerous states yet unformed, myriads of the human race, who will inhabit regions hitherto uncultivated, were to be affected by the result of their proceedings. It was necessary, therefore, to form their calculations on a scale commensurate to a large portion of the globe."[41]

Founders Jubilant with the Results of Their Labors

The writings of the Founders leave no doubt that they were fully aware that something wonderful had been accomplished. They had accomplished a task which no other group of political strategists had achieved for any other nation in recent times. Just a sampling of their statements will illustrate the ecstasy of their feelings.

America Could Become the Greatest Country Under Heaven

Iredell: "This is a spectacle so great, that, if it should succeed, this must be considered the greatest country under heaven; for there is no instance of any such deliberate change of government in any other nation that ever existed."[42]

A Government by Calculated Design

Huntington: "This is a new event in the history of mankind. Heretofore most governments have been formed by tyrants, and imposed on mankind by force. Never before did a people, in time of peace and tranquillity, meet together by their representatives, and, with calm deliberation, frame for themselves a system of government."[43]

A Unique Example of Voluntary Self-Government

Wilson: "Governments, in general, have been the result of force, of fraud, and accident. After a period of six thousand years has elapsed since the creation, the United States exhibit to the world the first instance, as far as we can learn, of a nation, unattacked by external force, unconvulsed by domestic insurrections, assembling voluntarily, deliberating fully,

and deciding calmly, concerning that system of government under which they would wish that they and their posterity should live."[44]

An Example for the World: Government by Reason

Jefferson: "We can surely boast of having set the world a beautiful example of a government reformed by reason alone, without bloodshed."[45]

"The Constitution ... is unquestionably the wisest ever yet presented to men, and some of the accommodations of interest which it has adopted are greatly pleasing to me, who have before had occasions of seeing how difficult those interests were to accommodate."[46]

"Divine Science"

John Adams agreed with John Locke. He believed there is a "divine science" of sound government for human happiness if finite human beings could just find the pieces and put them all together. In a letter written on June 17, 1782, from Holland, Adams mentioned twice the "divine science" of politics and this gave meaning to an earlier letter to his wife in which he said:

"The science of government is my duty to study, more than all other sciences; the arts of legislation and administration and negotiation ought to take place of, indeed to exclude in a manner, all other arts. [Under present war conditions] I must study politics and war, that my sons may have liberty to study mathematics and philosophy. My sons ought to study mathematics and philosophy, geography, natural history and naval architecture, navigation, commerce, and agriculture [during times of peace] in order to give their children a right to study painting, poetry, music, architecture, statuary, tapestry, and porcelain."[47]

After the United States became a free and independent people, Adams wrote to an English friend on February 3, 1786, that he hoped "to see rising in America an empire of liberty, and a prospect of two or three hundred millions of freemen, without one noble or one king among them."[48]

Adams stated that as of 1776 the Founders did not know precisely what form a government of free people should assume, but he said they did know that "happiness of society is the end of government" and happiness of the individual is the end of man.[49] It was in this context that Jefferson said in the Declaration of Independence that every human being has an unalienable right to "life, liberty, and the pursuit of happiness."

Of course, it was not easy to find the best form of government to provide the most happiness for the most people. It took Americans from 1607 to 1787 (180 years) to put the formula together. But when the formula was finished, it was a masterful product. The Founders demonstrated that John Locke was correct when he said in his second *Essay on Civil Government* that the soundest system of government will be the one that is built on the principles of natural law and nature's God. Sir William Blackstone had repeated this advice in his *Commentaries* and Baron Charles de Montesquieu had verified it after twenty years of research in the *Spirit of the Laws*. In fact, Montesquieu had set forth the suggested format for a constitution which, in some ways, was similar to the one that the Founders finally put together. He didn't have all of the answers, but he was moving in the right direction.

The genius of the American Founders was their tenacity to keep searching until they found solid, demonstrable answers to the hard questions relating to political science and prosperity economics.

CHALLENGE OF THE FUTURE
WORLDWIDE FREEDOM, PROSPERITY, AND PEACE

Worldwide Freedom, Prosperity, and Peace

STEP 8 — On this step the Founders hoped Americans would perfect STEP 7 and begin exporting their freedom and prosperity formula to all the world.

Constitutional Supremacy

STEP 7 — The American Founders established a new kind of republic based on a system of "constitutional supremacy."

The Articles of Confederation were replaced by a completely new system of People's Law under a written constitution.

The Articles of Confederation and State Supremacy

STEP 6 — The Articles of Confederation were adopted, providing for individual "state supremacy" and a committee of the states functioning as a national congress.

American colonists gained independence by force of arms and asserted their rights:

a. as guaranteed in Magna Charta (1215), Petition of Rights (1623), and English Bill of Rights (1689).
b. by electing their own assemblies.
c. by writing Articles of Confederation.

Parliamentary Supremacy

STEP 5 — Parliament chose a prime minister who appointed a cabinet and selected all chief administrative officials with the king's consent. Thus, the British established a republic structured on "parliamentary supremacy."

Evolution of Parliamentary Power

STEP 4 — Parliamentary power developed:

a. principle of no taxation without representation.
b. all laws by the consent of Parliament.
c. ability to impeach king's officers.

Magna Charta

STEP 3 — The great struggle to restore freedom began with King John signing the Magna Charta. It guaranteed that:

a. the people have inalienable rights.
b. the king must also obey the law.

Ruler's Law

STEP 2 — Freedom and natural rights were lost when England was conquered by the Normans (A.D. 1066) and became subject to Ruler's Law.

People's Law

STEP 1 — The Anglo-Saxons extensively developed People's Law.

A.D. 450 | 1066 | 1215 | 1265 | 1721 | 1776 | 1787 | 20TH CENTURY

The Founders Reach the Seventh Step

Finally the Constitution and the Bill of Rights attained the major hopes and aspirations of Thomas Jefferson, John Adams, Benjamin Franklin, George Washington, and the other Founders who had commenced their long pilgrimage under such adverse circumstances. To Thomas Jefferson and John Adams it was particularly gratifying because it represented the restoration of the "ancient principles."

On the opposite page we have charted the steps through which modern man was compelled to climb during the past one thousand years to reach the freedom landing on the seventh step. Before quoting one of the Founders on this great struggle, let us briefly summarize what happened on each of these steps:

Step One: People's Law

Until the eighth century A.D., the Anglo-Saxons still practiced with a lively appreciation most of the ancient principles which had characterized the precepts of People's Law. It was a system designed to preserve and protect the unalienable rights of the people and at the same time provide a divided, balanced, limited form of government.

As Thomas Jefferson discovered, the institutes of the Anglo-Saxons were almost identical with those of ancient Israel, which had the oldest system of representative government known to history.

Step Two: Ruler's Law

In A.D. 1066 the Normans, under William the Conqueror, subjugated the English people and established a royal dynasty which still occupies the throne of England. The Normans imposed on the English a system of Ruler's Law which destroyed the rights of the people, resulted in the confiscation of much of their land, and inflicted a system of cruel oppression on the people that was virtually unendurable.

The suffering and poverty of the people following the Norman conquest became a loathsome and repelling frame of reference in the minds of the English to motivate them in striving to regain their lost freedom. Historically, this was the only useful advantage of step two.

Step Three: Magna Charta

Because King John was one of the most cruel and ruthless of the Norman kings, the barons united their forces and compelled him to sign the famous Magna Charta, which not only returned to the people many of the rights which the conquerors had stolen away, but also acknowledged that the king, himself, was subject to the law. The Magna Charta is dated June 15, 1215.

The Magna Charta not only refers to the rights of the barons, the towns, and the churches, but it also makes frequent reference to the rights of English "freemen." The Founders counted themselves freemen and invoked the Magna Charta as a covenant on the part of the king and his heirs that those rights would be respected. This initial victory in the partial recovery of their rights became step three.

Step Four: Evolution of Parliamentary Power

The foundations of parliamentary government began to develop around 1265, and this gradually developed into a legislative voice to represent the desires of the people. It also provided a bargaining tool

to regain some of the lost powers of the people and limit the tyrannical powers of the king. The Parliament regained the right to have no taxation without the approval of the people's representatives. They also established the principle that there would be no laws imposed on the people that had not been approved by the Parliament. Finally, the Parliament secured the right to impeach the arrogant and abusive officers of the king whenever it could be shown that they had violated the law in the exercise of their high offices. This development of a legislative forum was step four.

Step Five: Parliamentary Supremacy

During the reign of two German kings over England (George I and George II, between 1714 and 1760), the Parliament was left on its own more than ever before. The government was run almost entirely by the king's prime minister, which meant that he and the other members of Parliament serving in the prime minister's cabinet could appoint all of the officials and have a relatively free hand in running the government. This brought England to the status of a limited monarchy with a parliamentary system of government which allowed the legislature to exercise practically unlimited power, subject only to the restraints which it determined to impose upon itself or which became necessary through circumstances. This executive and administrative self-determination became step five.

At Step Five, Parliament exerted virtual supremacy over the entire British government.

The parliamentary system in England never rose above this step, nor did its commonwealths, which followed the same pattern.

Step Six: The Articles of Confederation and State Supremacy

It was only in America that Englishmen acquired the advantages of step six. It was in the English colonies that the first opportunity for local or provincial assemblies was developed, with the delegates being elected by the people. This was first inaugurated in Virginia as early as 1619. As the colonies gained in economic and political strength, they demanded the full recognition of their rights as Englishmen under:

1. The Magna Charta which King John signed in 1215.
2. The Petition of Rights granted by Charles I in 1628.
3. The habeas corpus rights granted by Charles II in 1679.
4. The English Bill of Rights granted by William and Mary in 1689.

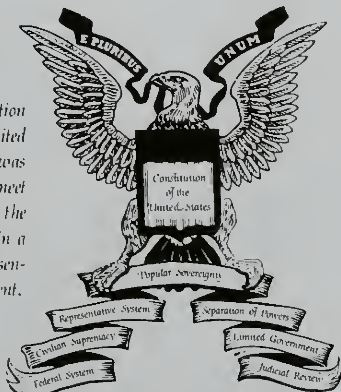
It was on step six that the colonies finally asserted their inalienable rights of self-government under the Declaration of Independence and confederated together as the United States. However, their form of government on step six was a confederated republic, where the states remained supreme. As we have already seen, the weaknesses of the Articles of

Confederation almost caused them to lose the Revolutionary War.

Step Seven: Constitutional Supremacy

In 1787 the American people set up a constitution of the people instead of a confederation of the states and made the Constitution the supreme law of the land. In other words, they started out under parliamentary supremacy with England, then advanced to state supremacy under the Articles of Confederation, and finally ended up with constitutional supremacy, the finest form of government yet devised by man.

Under the American Constitution a new structure of government was established on a much higher plane than either the parliamentary system or the confederation of states. It was a people's "constitutional republic," where a certain amount of power was delegated to the states and a certain amount was delegated to the national government. There was a small dimension of power which they shared jointly. All other power was retained by the people. It is the delegation by the people of certain powers to the states and certain powers to the national government which we call "dual federalism."



The Constitution of the United States was designed to meet the needs of the people in a limited, representative government.

A Founder Describes the Evolution from Step One to Step Seven

Let us carefully read the words of Colonel Thomas Hartley as he described for the Pennsylvania ratification convention the ascent of the English from step one to step five, and of the Americans from step five to step seven.

Hartley: "Previously to the Norman conquest, that nation certainly enjoyed the greatest portion of civil liberty then known in the world. But when William, accompanied by a train of courtiers and dependents, seized upon the crown, the liberties of the vanquished were totally disregarded and forgotten, while titles, honors and estates were distributed with a liberal hand among his needy and avaricious followers.

"The lives and fortunes of the ancient inhabitants became thus subject to the will of the usurper, and no stipulations were made to protect and secure them from the most wanton violations. Hence, Sir, arose the successful struggles in the reign of John, and to this source may be traced the subsequent exertions of the people for the recovery of their liberties, when Charles endeavored totally to destroy, and the Prince of Orange at the celebrated era of British revolution, was invited to support them, upon the principles declared in the bill of rights.

"Some authors, indeed, have argued that the liberties of the people were de-

rived from the prince, but how they came into his hands is a mystery which has not been disclosed. Even on that principle, however, it has occasionally been found necessary to make laws for the security of the subject — a necessity that has produced the writ of habeas corpus, which affords an easy and immediate redress for the unjust imprisonment of the person, and the trial by jury, which is the fundamental security for every enjoyment that is valuable in the contemplation of a freeman....

"As soon as the independence of America was declared, in the year 1776, from that instant all our natural rights were restored to us, and we were at liberty to adopt any form of government to which our views or our interest might incline us. This truth, expressly recognized by the act declaring our independence, naturally produced another maxim, that whatever portion of those natural rights we did not transfer to the government, was still reserved and retained by the people; for, if no power was delegated to the government, no right was resigned by the people; and if a part only of our natural rights was delegated, is it not absurd to assert that we have relinquished the whole? Some articles, indeed from their pre-eminence in the scale of political security, deserve to be particularly specified, and these have not been omitted in the system before us.

"The definition of treason, the writ of habeas corpus, and the trial by jury in criminal cases, are here expressly provided for; and in going thus far, solid foundation has been laid."[50]

Step Eight: Worldwide Freedom, Prosperity, and Peace

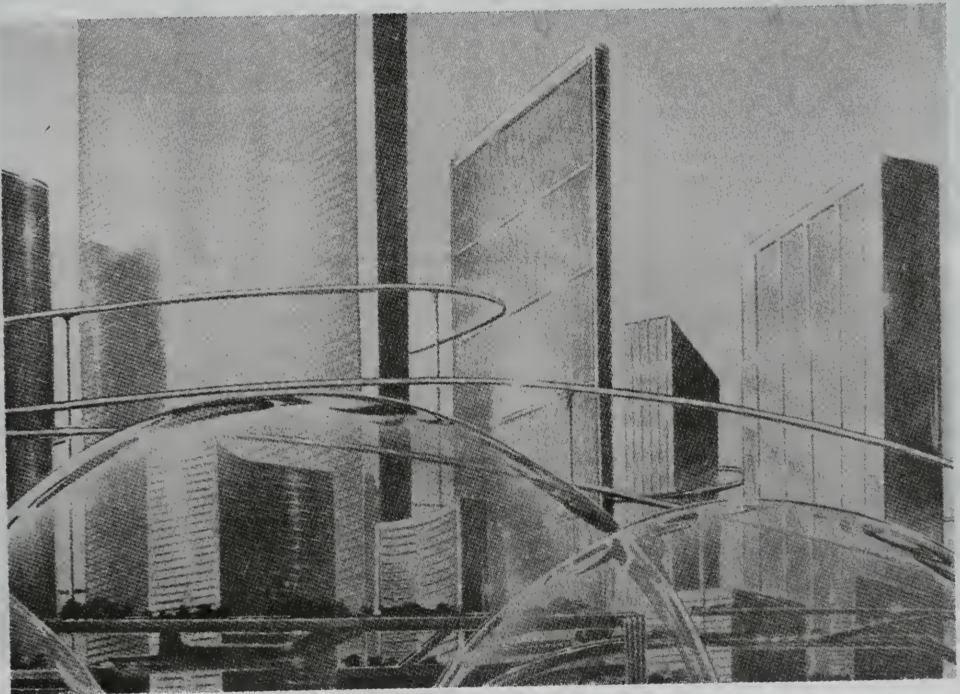
It was the hope of the Founders that after extensive experience and learning how to practice the principles of a just and orderly government under the Constitution, the American people would begin exporting these principles to other nations. It was felt that not only would the constitution attract the people of other nations, but the wealth generated under the Founders' precepts of prosperity economics would also make other nations anxious to acquire these same blessings. With freedom and prosperity spreading around the globe, the Founders hoped the human aspiration for universal peace might then become an achieved reality.

The United States never attained the eighth step for the simple reason that very early in its history the nation began to slip off its pedestal on the seventh step. This lost ground must be regained and a firm footing established at the seventh-step level before the Americans of our day can hope to lead the world toward the eighth step.

Of course, a most important part of America's future success involves the restoration of those principles which make for security and happiness among the people. We call them "prosperity economics."

Now, let us see how the Founders intended to build a prosperous people — as it turned out, the most prosperous people in the world.

1. Elliot, 2:421–24.
2. Ibid.
3. Ibid., 4:319–20.
4. Ibid., 2:145–46.
5. Ibid., pp. 234–35.
6. *Federalist Papers,* No. 37.
7. Ibid., No. 15.
8. Elliot, 2:526.
9. Ibid., pp. 430–31.
10. Ibid., 4:16.
11. Ibid., 2:6.
12. Ibid., 4:21.
13. *Federalist Papers,* No. 45.
14. Elliot, 2:502.
15. Ibid., pp. 523–24.
16. Bergh, 14:421.
17. Ibid., 1:122.
18. Ford, 10:45.
19. Elliot, 4:35.
20. Bergh, 10:263.
21. Elliot, 2:350.
22. Ibid., pp. 442–43.
23. Ibid., 3:14.
24. Ibid., 2:507.
25. Ibid., 3:107.
26. Ibid., 2:195–96.
27. Ibid., 3:259.
28. *Federalist Papers,* No. 83.
29. John Bach McMaster and Frederick D. Stone, eds., *Pennsylvania and the Federal Constitution, 1787–1788* (1888; reprint ed., New York: Da Capo Press, 1970), pp. 264–65. Hereafter cited as *Pennsylvania.*
30. *Federalist Papers,* No. 17.
31. Elliot, 3:608.
32. Bergh, 15:278.
33. Ibid., p. 332.
34. Elliot, 3:563.
35. *Federalist Papers,* No. 51.
36. Elliot, 2:348–49.
37. Ibid., pp. 85–87.
38. Ibid., pp. 93–94.
39. Pinckney was referring to William Paley, *The Principles of Moral and Political Philosophy* (1785), 2:174–75.
40. Elliot, 4:328–30.
41. Ibid., 2:418–19.
42. Ibid., 4:99.
43. Ibid., 2:200.
44. Ibid., p. 422.
45. Boyd, 13:378.
46. Bergh, 7:322.
47. Koch, *The American Enlightenment,* pp. 188–89.
48. Ibid., p. 191.
49. Ibid., p. 246.
50. *Pennsylvania,* p. 289.



With the export of the Founders' principles of government, worldwide peace and prosperity could become a reality.

POLITICAL AND ECONOMIC RIGHTS

WHICH PROTECT THE DIGNITY AND FREEDOM OF THE INDIVIDUAL

- RIGHT TO WORSHIP GOD IN ONE'S OWN WAY.
- RIGHT TO FREE SPEECH AND PRESS.
- RIGHT TO PEACEABLY ASSEMBLE
- RIGHT TO PETITION FOR REDRESS OF GRIEVANCES.
- RIGHT TO PRIVACY IN OUR HOMES.
- RIGHT OF HABEAS CORPUS —NO EXCESSIVE BAIL.
- RIGHT TO TRIAL BY JURY— INNOCENT UNTIL PROVED GUILTY.
- RIGHT TO MOVE ABOUT FREELY AT HOME AND ABROAD.
- RIGHT TO OWN PRIVATE PROPERTY.
- RIGHT TO FREE ELECTIONS AND PERSONAL SECRET BALLOT.

- RIGHT TO WORK IN CALLINGS AND LOCALITIES OF OUR CHOICE.
- RIGHT TO BARGAIN WITH OUR EMPLOYERS AND EMPLOYEES.
- RIGHT TO GO INTO BUSINESS, COMPETE, MAKE A PROFIT.
- RIGHT TO BARGAIN FOR GOODS AND SERVICES IN A FREE MARKET.
- RIGHT TO CONTRACT ABOUT OUR AFFAIRS.
- RIGHT TO THE SERVICE OF GOVERNMENT AS A PROTECTOR AND REFEREE.
- RIGHT TO FREEDOM FROM ARBITRARY GOVERNMENT REGULATION AND CONTROL.

CONSTITUTIONAL GOVERNMENT

DESIGNED TO SERVE THE PEOPLE

CHAPTER

PROSPERITY ECONOMICS

One of the reasons why tens of millions of people from all over the earth have migrated to America is that the Founders made it a land of fantastic economic opportunity.

By the end of the nineteenth century, their formula was beginning to give Americans the highest standard of living in the world. With less than 6 percent of the earth's population, they were producing more than half of just about everything.

This was all made possible because Americans had a Constitution which allowed them to be the first nation to practice the free-market principles set forth in a famous book by Adam Smith entitled *The Wealth of Nations.*

Free enterprise has made possible the most wonderful technological advances the world has ever seen.

In this chapter we will discuss the principles of the Founders' highly successful free market system, which we might call "Prosperity Economics." First of all, let us talk about *people* and economics.

Who Does the World's Work?

To survive and prosper on the planet Earth, human beings have to function on several different productive planes. Each category is indispensable to the success of the system. Here are the three major categories:

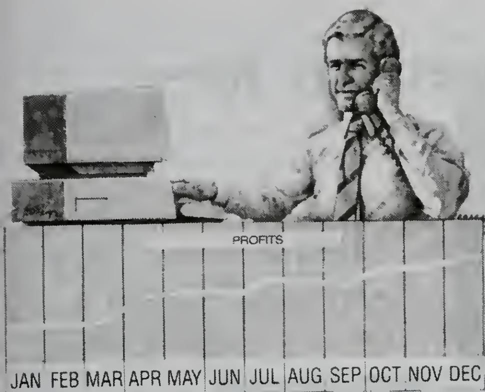
1. *The Enterprisers.* These are the self-motivated, highly adventurous, self-confident, and aggressive people who are known as "entrepreneurs." They have the capacity to see opportunities to improve conditions and make money doing it, while others do not. They are willing to risk fortunes on new ventures and make or lose fortunes in the process. They are gutsy, stubborn, dynamic, imaginative people who are responsible for the creation of thousands of new business enterprises, thousands of new industries, and millions of new jobs. No nation can prosper unless it has a strong group of Enterprisers or entrepreneurs.

However, in every age and every country, the Enterprisers tend to form into a fraternity of sorts, which is often referred to as *The Establishment* or the "power people." These are the relatively few wealthy families who have accumulated land, factories, transportation, communications, and banks and eventually acquire a tremendous amount of influence on every level of society.

The Founding Fathers recognized in the fraternity of Enterprisers two tendencies which needed to be guarded against when the Constitution was written.

One tendency is to get greedy and try to take over a whole sector of the economy by eliminating all of their competition.

Another tendency is to attempt the infiltration of every level of government and gradually use the powers of government to impose their will on the people and the economy to their own advantage. As we shall see, the Founders recognized these dangers and hoped to devise a constitutional structure which would be the means of keeping these tendencies under control.



Wealthy Enterprisers are job makers.

As a group, the Enterprisers are very frugal or even parsimonious in gathering their wealth. But often they are unusually generous once they get their wealth accumulated. The Establishment people are the ones who set up most of the museums, many of the universities, the parks, the research institutes, the charity funds, and a multitude of other enterprises which greatly enrich the quality of life in any society. Nevertheless, while the Founders wanted the Establishment to be healthy (and wealthy) in order to create a continuous outpouring of new jobs, they still wanted the government to remain in the hands of the people.

2. *The Sales and Service People.* This second group has the following general profile: they are those who are conservative by nature and do not like to take the risks which the Enterprisers take. Nevertheless, they are hard workers and will serve in many of the difficult and tedious jobs which are essential to the economy. Their conservative perception of life tends to make them resist any radical changes and "go by the book" when they make decisions. These people tend to be more contented with the status quo than the Enterprisers. They often have more regular hours than the Enterprisers and enjoy a more stable life-style of about one-third work, one-third personal-interest activity, and one-third sleep.

In this group will be found the clerks in the stores, the teachers in the classroom, the accountants, the lawyers, the doctors, the dentists, government workers, the people in entertainment, and the gigantic sales force that lubricates and fuels the whole economic system.

Here and there within this group will be found an occasional Enterpriser on his way up. This will be an individual who is ambitious, who takes over the sales group, graduates to management, and then wings out on his own.

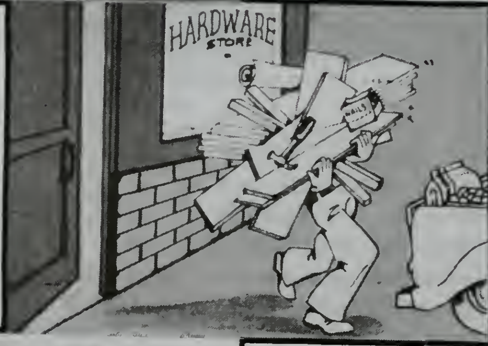
It also will be recognized that many in this group comprise a mixture of service and enterprise. This is particularly true in the various professions. However, the emphasis is on service to a large extent, and only a few break out and become full-fledged entrepreneurs.

3. *The Physical Labor Group.* Much of the world's work requires massive quantities of muscle power. Even in our modern age of machines and computerized robots there will always be physical labor tasks that require men and women who are willing to live by the sweat of their brows. Some of these tasks pay well, others pay poorly — but all are necessary. It is in this group that the unskilled or less skilled have the opportunity to break into the national work force. With on-the-job training and strenuous exertion they can gain new advantages and move up through the ranks into the skilled labor sector and then on to management jobs and perhaps eventually take flight on their own as Enterprisers.

Freedom to—

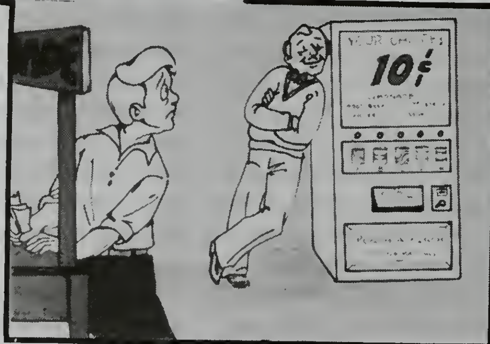
TRY

BUY



SELL

FAIL



It is a mistake to designate the physical labor group specifically as "the working class." Often men die younger "working" on the Enterpriser level than they do on the physical labor level. All dimensions of the world's production of goods and services require immeasurable quantities of intense and arduous work—physical, mental, and spiritual.

The Sorting-Out Process

But how do people find their place in these various groups?

It comes about very naturally in a free society which has no rigid class structure. Actually, the vast majority of the work force will try their hand among all three of these groups before settling into the one which provides the best opportunity or the most satisfaction—perhaps both. In any event, it is important to remember the warning of both Adam Smith and the Founders that the system does not work efficiently unless the constitutional structure of a nation provides and perpetuates four fundamental economic freedoms:

1. The freedom to *try.*
2. The freedom to *buy.*
3. The freedom to *sell.*
4. The freedom to *fail.*

This simply emphasizes that the greatest enemy of a free-market economy is illegitimate governmental intervention. All over the world, the countries that are floundering economically are those where governments have tried to use political power to destroy the people's free market and regulate their economy to death. Of course, there are four situations where governmental intervention is legitimate:

1. To prevent force (criminal invasion of the market).
2. To prevent fraud (invasion of the market with deceptive trickery).
3. To prevent monopoly (destruction of competitive free trade) of the market.
4. To prevent debauchery (exploitation of the vices to the detriment of the community—gambling, drugs, liquor, prostitution, pornography, etc.).

On this fourth point, there are those who feel that there should be no restrictions on the vices. They claim people should be allowed to indulge in vices if they wish.

The answer to this problem is fairly simple. First of all, private debauchery happens to fall into the category of private morals, which must be controlled by the individual and his conscience. However, the issue of public morals is another matter.

In a republican system, the majority of the people in a community have the right to protect the quality of life which they consider to be in the best public interest. This means that no individual has the right to sell, distribute, or promote any products or activities which are prohibited by the rule of the majority. Of course, government has no business snooping into the private morality of the people—debauched though it may be—but the moment there is a complaint that someone is promoting debauchery or adversely affecting someone in the community, it is a matter of *public* morality. The community has the right to intervene.

The vices are a great temptation to a certain type of adventurous Enterpriser because debauchery nearly always brings in enormous profits. To protect itself, society outlaws these activities unless the majority of the community wants to allow them. In that case the community merely "regulates" them. This is the practice in certain resort cities such as Las Vegas, Reno, and Atlantic City.

Is the Profit System Necessary?

There has been a considerable amount of confusion concerning the place of profits in the free market system. Karl Marx and others thought they could invent a system without any profits, but everywhere their experiments have failed. This was because they did not understand the genius of the profit system.

A profit is whatever is necessary to make it *worthwhile* for someone to provide the public with a product or a service. When the supply of a product or service is short, the profit will be high because somebody has to go to a lot of effort and trouble to provide it. However, if machinery is invented to make it fairly simple to produce the product or provide the service, then the price and the profit on each unit will be greatly reduced. Nevertheless, mass consumption of the product may allow the profits to accumulate in greater quantities than before.

Take, for example, the ballpoint pen. This glamorous little piece of writing equipment came on the market at the close of World War II for $12.95. The sales were few, but the profit on each pen was considerable. Competition and improved methods of production brought the price down to $4.95. Immediately, more people could afford the pen, and while the profit was less per pen, the accumulated profits skyrocketed. The ballpoint next came down to $2.95, then $1.98, and eventually it came all the way down to 10 cents. By that time millions of pens were being purchased, and while the profit per pen was miniscule, the accumulated profits were enormous.

All of this is made possible by the simple fact that it is *worthwhile* for someone to try to put out a product cheaper and better than those presently on the market. If there is a possibility of making a profit through an improvement, then it will be worthwhile to attempt it. This is the key to success under the free market system. Profits make it worthwhile for somebody to do things or make things better and cheaper. A corollary of this is: "No profit, no product."

What Increases the Standard of Living?

Adam Smith wanted people to realize that true wealth is not an accumulation of silver and gold but the development of farms, factories, homes, plentiful clothes, cheap fuel, good streets, good schools, hospitals, efficient transportation, and universal access to various types of communications.

How do we get these things which constitute our "standard of living"? The answer should be exported all over the world: *Develop a free-market system that makes everything abundant and cheap.* The story of the ballpoint pen is a classical example of what the free market and the profit motive can do to raise the standard of living. It makes nearly everything abundant and therefore cheap. This allows the vast majority of the people to have more clothes, better homes, better communications, better transportation, better sanitation, better education, and all of the other things which are exclusively the prerogative of the rich under *any other system.*

Is Competition Wasteful?

In highly centralized, planned economics it is claimed that competition is wasteful. It is argued that it is a waste of resources to build two railroad tracks when one would carry the traffic.

But that is not the way it works out. If there is only one track and only one com-

pany providing the service, an economic tragedy occurs. The track gets in disrepair, the service is abominable, and before long it is *not* handling the traffic. On the other hand, if there are two or more systems competing for the business, the tracks are constantly improved; the equipment gets faster, safer, and more comfortable; the people get better service; more of them ride the train; more profits are made, and the system expands to areas which a monopoly system refuses to serve.

This leads us to the conclusion that competition is the most frugal and economical way to provide a product or a service. It is the *monopoly* system that wastes, decays, and degenerates into a miasma of disappointing results.

What About Price Controls?

Price controls are a political gimmick which is often recommended as a panacea for high prices and noisy consumer complaints. Price controls always inflict inestimable damage to the market and destroy the very thing they are supposed to provide—protection of the poor.

Price controllers at work in Washington a decade ago. Despite good intentions, price controls invariably do more harm than good.

Let us take a specific example. A few years ago the potato crop was very limited and the prices shot up so high that many people found it difficult to get potatoes. The government had a remedy—price controls. There doesn't happen to be any constitutional authority for price controls in peacetime—and they don't work in wartime—but it had highly popular political appeal and the leaders of the country were lauded for their "courageous price-control program."

The results were interesting. At suppressed prices, the whole potato supply disappeared in a couple of weeks. Thereafter, no potatoes could be had at *any* price. Now what would the poor do? Or anyone else, for that matter. Had the government let things rock along, everyone could have had a few potatoes and the high prices would have made it worthwhile for potato farmers to have brought forth an abundance of this particular staple within a few more months. That, of course, would have forced the price back down, and once more potatoes would have been abundant and cheap. Under price controls, however, it was not worthwhile or profitable to raise potatoes, and there would have been a scarcity of this product for another year if the government had not lifted its price controls after seeing their failure.

Now take the example of a nonperishable product like steel. When the government imposed price controls on many products, including steel, in the early 1970s, certain essential products disappeared from the market entirely. Why? It was simply impossible to make a profit. It was no longer worthwhile to produce these things. One of these products was baling wire, which ordinarily sold for $12.95 a reel. When hay farmers found their crop in jeopardy because no baling

wire was available, the cry went out, "We *have* to have baling wire!" The government did not respond, but something else did—the black market. The baling wire was shipped in from foreign countries, but it had to be smuggled into the country or a high tariff had to be paid. Farmers learned that they could get the wire, but it was several times the cost they had paid before. The black market always ends up involving a chain of interlocked corruption all along its distribution channels.

So here is the story of price controls:

1. Price controls wipe out the margin of profit.
2. This results in a scarcity of production;
3. Which results in the development of a black market;
4. And this results in corruption and criminal activity.

Is Some Regulation of the Economy Desirable?

Except for the four areas of governmental intervention mentioned earlier which were considered necessary by Adam Smith and the Founders, it is difficult to find any other area where governmental intervention has proven helpful.

One of the major problems connected with governmental intervention in the economy is the fact that major Enterprisers sometimes exert pressure on the government to curtail competition, thus protecting their investments and their private interests. This is what the railroads and airlines did for years. So have the utilities. Recent deregulation has already begun to reduce fares, improve the service, and introduce upgraded equipment.

Of course, the Founders recognized that regulations are required in certain areas of the economy, such as with building codes, environmental protection, sani-

Some have accused government of simply being a facade for private monopolies. In truth, government should prevent monopolies so that market forces can operate freely.

tation and health, and so forth; but they set up the Constitution so that these responsibilities would remain with the state and local sectors of government unless they involved interstate transportation or certain limited areas assigned to the federal government.

The breakdown of these constitutional restrictions has been counterproductive in the extreme, just as over-regulation of the railroads and airlines proved to be.

Is Bigness Bad?

As far as bigness was concerned, the Founders' greatest fear was big government.

In the field of economics, they were striving for bigness. Efficiency in production required it. The whole thrust of the industrial revolution, and later the machine revolution, was toward bigness. Iron works had to be big. Shipping had to be big. Later, railroads had to be big. So did the telegraph, and the textile mills. Bigness wasn't the problem so long as the opportunity for competition was preserved.

The economic perspective of the Founders was virtually identical to that of Adam Smith: encourage any legitimate means which make goods and services abundant and cheap. That was the for-

mula. If it takes bigness to make a product abundant and cheap, so be it.

Fear of bigness did not clearly emerge in the United States until after the Civil War. For the first time in American history huge fortunes began to be accumulated by the Enterprisers, and some of them were fabulous. Bigness began to be suspect. However, this was an expansionist period which gave entrepreneurs their heyday. The country was on the way to becoming the richest industrial nation in the world, and all of this with less than 6 percent of the earth's population.

In the process, the Enterprisers began to scare people. Among themselves, the Enterprisers were extremely competitive. They would bankrupt one another with gleeful satisfaction. They would wage price wars with the ferocity of military combatants. As for the public, the Enterprisers pushed production up and prices down. Nevertheless, people began to call the most aggressive Enterprisers "Robber Barons."

However, underneath it all, the invisible hand of technology, bigness, and competition was on the way to providing Americans with the highest standard of living in the world. The self-interest of the entrepreneurs — both the good and the greedy — helped to bring it about. How the invisible hand works for the long-range benefit of the public is demonstrated in the careers of nearly every one of the so-called Robber Barons. Take, for example, the rise of Cornelius Vanderbilt.

Cornelius Vanderbilt was born in 1794 and made his first modest success in running a ferry boat across the New York harbor. As the nineteenth century progressed, he developed a fleet of steamships and became America's first super-millionaire. Then he maneuvered his way into the railroad business where there were 1,500 different companies and the

Through shrewd dealing, a few Enterprisers were able to gain control of the railroad industry in the mid-1800s.

service was abominable. Take, for example, a train trip from New York to Chicago. In 1853 it took fifty weary hours to make this trip and required seventeen transfers from one railroad system to another. Vanderbilt saw a chance to make a lot of money. He bullied his way through state legislatures, wily competitors, and reluctant financial backers to come up with a single system that could deliver passengers from New York to Chicago in twenty-four hours and require no transfers from one train to another. What was the result?

Vanderbilt made a lot of money on this deal. People said it was the only way to go. Meanwhile, commuters between these two cities profited immensely in convenience and speed of travel. Of course, there was nothing philanthropic about Vanderbilt's achievement. His family described him as very much of a Scrooge. Unless he could have made a substantial profit from the project he would have never attempted it. But the people profited too. This is why Adam Smith said not to worry too much about greedy people. If strong self-interest fuels their profit motive to accomplish something which is badly needed by the public, let them undertake it. The only concern is to keep them within the parameters of the law and be sure the project is for the general welfare of the people and not the exploitation of the people.

The Civil War created unprecedented demands for all kinds of products, and the constitutional structure left the market wide open for the entrepreneur with true grit. Economist Fred Shannon describes the situation:

"Free-for-all competition prevailed in the 1860's. There were thousands of independent oil drillers in the Pennsylvania fields and over 200 refineries in the country. The Eastern coal fields had some 450 major operators. About 200 separate companies were making harvesting machinery, there being 75 in the state of New York alone. The Comstock Lode boasted over 100 proprietors, while in Michigan there were something like 50 operators each in the shale and copper mining industries. In fact, in nearly every industry the number of companies or individual venturers was limited only by the law of supply and demand. Marginal producers were ever ready to enter the field when prices were high. But when demand was low in proportion to output, the competition for control of markets led to ruinous price cutting.

"Though this sort of *arrangement was eminently satisfactory to the consumers*, the producers too often for their own comfort were either driven from business or reduced to lean and profitless years."[1]

Producers Combined to Survive and Prosper

A variety of procedures was developed to stabilize the boom and bust cycle of the producers. Some entered into price agreements, but these broke down under the pressure of competition. Some began to pool their capital so they could purchase supplies in massive quantities and get each member company advantages which would not be possible if they purchased individually. The co-ops or pools of this kind were successes in some industries, failures in others. Finally, the Standard Oil Company developed the first "trust," and this launched a whole new episode of structured "big business."

In 1882, a secret, informal trust was created by Standard Oil to manage the joint efforts of several interrelated corporations. As a group they could be managed to their mutual advantage without

running into the restrictions of state corporate laws. The procedure was to have a corporation turn over all of its stock to the Standard Oil Trust and receive back certificates which represented each corporation's share of the trust. In this way, about 50 persons managed 39 corporations, and the former stockholders looked to the trust for their dividends each year instead of the corporation in which they were stockholders.

By the end of 1882, the Standard Oil Trust had achieved control of about 90 percent of the entire American oil industry. In the process, John D. Rockefeller and his associates were not only making a gigantic fortune with this smooth management of a near monopoly, but the public was getting the cheapest oil and the highest quality of service provided by any oil industry in the world. Rockefeller was so proud of his achievement that he misinterpreted how the system was working and decided competition is a needless waste. He decided the country would be better off if he were running the *entire* oil industry. He therefore set out to eliminate the remaining 10 percent of his competitors and is quoted as saying, "Competition is a sin."

In the late eighteenth century, John D. Rockefeller was accused of being the overlord of government.

However, the state of Ohio eventually ordered Standard Oil to dissolve its trust because Ohio law prohibited one corporation from owning the stock of other corporations. Thereafter Standard Oil incorporated in New Jersey, where that state allowed one corporation to own the stock of other corporations. In this way Standard Oil began to serve as a holding company in a new kind of trust which seemed to permit virtually unlimited expansion. Others soon followed suit, and each of the trusts began to prosper enormously.

However, in 1890 the Sherman Anti-Trust Act was passed, making any business structure illegal which operated in "restraint of trade" or was designed to "monopolize" the market. In 1914 the Clayton Act implemented the Sherman Act, and the Federal Trade Commission was created that same year to investigate any "unfair" business practices.

Was Trust Busting Good or Bad?

Almost a century later, economists and politicians were wondering whether governmental intervention in these so-called "trusts" had been a mistake. The prosecution of most cases had not been against monopolies but against "bigness," and many of the government cases had disrupted industries which by their very nature required bigness if the people were to get the best quality at the best price.

This problem was vividly demonstrated when Standard Oil was ordered to dissolve itself into more than sixty separate companies in 1911. The courts made no effort to examine whether there had been restraint of trade or the exclusion of competition. Nor did they examine the market from the consumer's point of view to see what the alleged monopoly had done. The court simply asserted that a structure or combination as extensive as Standard Oil raised a *prima facie* presumption of monopoly and restraint of trade. Professor D. T. Armentano describes what a careful analysis of the situation revealed.

He reports that during Standard Oil's so-called monopoly "prices fell, costs fell, outputs expanded, product quality improved, and hundreds of firms at one time or another produced and sold refined petroleum products in competition with Standard Oil.... The significant point here is that the Supreme Court did not analyze these issues."[2]

The Supreme Court tried to recover its balance in *U.S.* v. *United States Steel Corporation* (1920)[3] by allowing U.S. Steel to do what it had not allowed Standard Oil to do—remain a holding company for a whole consortium of other corporations. The Court conceded that "the law does not make mere size an offense." Unfortunately, this balance did not endure for long.

By 1982, William Baxter, head of the Justice Department's Antitrust Division, felt there had been a backlash against the consumer as a result of the mishmash of judicial decisions and anti-business policies of the government. In an editorial review, the *Wall Street Journal* stated:

"The Supreme Court, asserts Mr. Baxter, ...has laid down such a confused and self-contradictory welter of language on antitrust that its rulings don't yield the faintest idea of what the antitrust laws mean.

"He contends that courts and overzealous enforcers have imposed higher costs on consumers by barring, in the name of antitrust, some of the most efficient business practices and mergers—especially

by the largest and often most efficient companies."[4]

All of this simply returns us to Adam Smith's original premise that the ultimate test is what allows the production of goods and services to be abundant and cheap. If the antitrust laws are hindering this process, perhaps they should be completely reexamined.

As trusts grew, many Americans began to fear that they were taking over the country. But trust-busting often hurt, rather than helped, the consumer.

Are There Too Many Varieties of Individual Products?

Another point should be considered in connection with prosperity economics: should the government intervene to reduce the number and variety of products? Don't we have more varieties than we need?

In socialist countries the government continually intervenes to discourage or prohibit the "deployment of valuable resources" in unnecessary "duplication" of products already available on the market.

The big question, of course, is who should decide when there are too many varieties and which ones should be eliminated. When the British Labor Party outlawed a certain kind of cheese in England as "unnecessary," there was such an uproar of protest that it is said to have contributed to its defeat in the 1951 elections.

Adam Smith and the Founders had a much more scientific way of deciding how many varieties of goods and services should survive in the marketplace. It was simply a case of letting the people vote with their dollars. By this automatic procedure the law of *supply and demand* determines which products are desired and which are not. It also provides an automatic index of how much the people are willing to pay for particular goods and services and at what point they tend to stop buying.

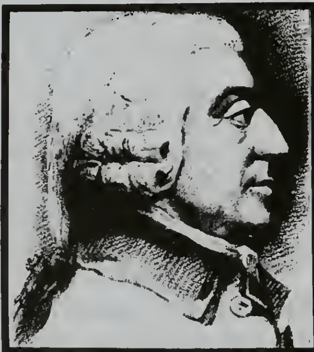
This is an important element in the formula of prosperity economics. Nevertheless, the volume of varieties is an area which continually bothers certain political master-planners who constantly try to meddle with the system.

Having said this, we also need to point out that Adam Smith was not a purist when it came to laissez-faire economics as were the Physiocrats in France. With him

the role of government was strictly a question of whether or not there were utilitarian benefits to the consumer. In his book, *The Wealth of Nations*, there are numerous examples (such as force, fraud, monopoly, and debauchery) which demonstrate that he knew private interests do not always synchronize with the general welfare of the people. And he further acknowledged that in these instances governmental involvement is justified. He emphasized, however, that there should only be minimal involvement. As several of the Founders are quoted as saying, "He governs best who governs least."

How Adam Smith Got Lost in the Shuffle After 1900

In spite of the fact that the fruits of the free-market economy were making the United States the biggest and richest industrial nation in the world, the beginning of the twentieth century saw many prominent and influential leaders losing confidence in the system. These included wealthy industrialists, heads of multinational banking institutions, leaders in the academic world, and some of the more innovative minds in the media. The same feverish restlessness was taking hold in similar circles in Europe.



Adam Smith, the father of prosperity economics

It was true, as it is with all systems, that the free-market economy was in need of some adjustments and fine-tuning, but these leaders were getting ready to throw the entire system overboard. The problems of the day included a number of large-scale strikes, the rise of powerful trusts, the mysterious recurrence of boom-and-bust cycles, and the rise of a new Populist movement in which certain agriculture and labor groups were demanding that the government get involved in the redistribution of the wealth.

Many of these problems were either caused or aggravated by the very people who were demanding "a new system." The "new" system would involve extensive government regulation if not outright expropriation of major industries and natural resources.

It was in this climate that Adam Smith and the free-market economy fell out of favor. Collectivism, socialism, government ownership of industry, subsidy of the farmers, and a whole spectrum of similar ideas were permeating the country when World War I broke out. This greatly accelerated the idea of strong centralized government with regulatory power over every aspect of the marketplace.

John Chamberlain Describes What Happened to Adam Smith

By the 1920s, the debunking of the Founding Fathers was in full swing. The obsolescence of the Constitution was discussed openly. The ideas of Adam Smith were considered archaic. John Chamberlain, one of the foremost writers of our own day, was just coming up through college. He describes the academic climate of that era:

"When I was taking a minor in economics as a congruent part of a history major

back in the 1920s, Robert Hutchins had not yet started his campaign to restore a reading of the 'great books' to college courses. So we never read Adam Smith's *The Wealth of Nations*. We heard plenty about it, however. The professors treated it condescendingly; we were told it was the fundamentalist Bible of the old dog-eat-dog type of businessman.

"The businessmen, in that Menckenian time, were considered the natural enemies of disinterested learning. We, as students, regarded them as hypocrites. They talked competition, and invoked the name of Adam Smith to bless it. Then they voted for the high-tariff Republican Party. Somehow Adam Smith, as the man who had justified a business civilization, got the blame for everything. We weren't very logical in those days, and we were quite oblivious to our own hypocrisy in making use of our businessmen fathers to pay our college tuition fees and to stake us to trips to Europe."[5]

Adam Smith Out, Karl Marx In

John Chamberlain eventually came to realize what the intellectual leaders of his day were doing. They were deprecating the Founders and the free-market economy to create a vacuum which would then be filled with a completely new formula. Their new economic nostrum was the very toxin the Founders had warned against. Chamberlain describes what happened:

"The depression that began in 1929 is generally considered the watershed that separates the new (collectivist) age from the old, or rugged individualist, age. Before Franklin Roosevelt, we had had the republic (checks and balances, limited government, inalienable rights to liberty and property, and all that). After 1933 we began to get the centralized state and interventionist controls of industry. Actually, however, the inner spirit of the old America had been hollowed out in the Twenties. The colleges had ceased to teach anything important about our heritage. You had to be a graduate student to catch up with *The Federalist Papers*, or with John Calhoun's *Disquisition on Government*, or with anything by Herbert Spencer, or with *The Wealth of Nations*. We were the ignorant generation.

"The depression began our education. But the first "great book" in economics that we read was Marx's *Capital*. We had nothing to put against it. Talk of 'planning' filled the air. We read George Soule and Stuart Chase on the need for national blueprints and national investment boards and 'government investment.' Keynes was still in the future, but his system was already being laid brick by brick. And Adam Smith was still a word of derision."[6]

The Rediscovery of Adam Smith

The education of the present writer was similar to that of John Chamberlain. I was less than a decade behind him. We were all part of a generation of lost Americans who had to rediscover our heritage the hard way. For nearly a quarter of a century the Founders had been relegated to the preindustrial past. Certain professors spoke disparagingly of what they called the "myths the Founders believed." The Founding Fathers were all very old-fashioned, they said.

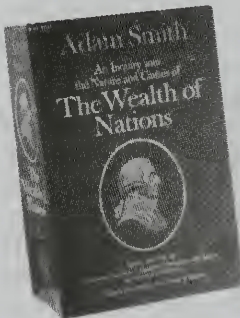
Gradually, however, the intellectual light of day dawned on many thousands of that lost generation. Ivor Thomas wrote his book, *The Socialist Tragedy* (New York: The Macmillan Company, 1951), explaining what socialism had done to Europe. Max Eastman wrote his *Reflections on*

the Failure of Socialism (New York: The Devin-Adair Company, 1962), explaining what socialism had done to America and the world.

For some of us there was a genuine awakening. The traditional values of the Founders began to emerge with a new message of promise so long neglected. John Chamberlain describes his rediscovery of Adam Smith:

"We had to discover the real Adam Smith the hard way, by living our mistakes, and by being led to the whole body of the literature of freedom that had created the American federal system. Only then were we able to appreciate Smith. Ironically, our education paralleled that of Adam Smith himself, which took place over a period of a dozen years between the close of the Seven Years War and the outbreak of the American Revolution. We would have been saved so much trouble if we had only been compelled to read—and digest—*The Wealth of Nations* in a *first* college course in economics, with James Madison's political theory as a side dressing.

"Smith's book is, indeed, the beginnings of everything that is important to economic theory, the lack of clarity on value theory notwithstanding. It should be the natural starting point for students of economics for the simple and compelling reason that it anticipated Ludwig von Mises by a full century and a half in considering economics as part of a wider science of human choices. Smith backed into his study by way of a general preoccupation with human destiny in a way that should be utterly convincing to our own pragmatic day."[7]



In 1776, Adam Smith published his landmark book, An Inquiry into the Nature and Causes of the Wealth of Nations.

Making the Whole Nation Prosperous

It was realized, of course, that some would prosper more than others. That is inevitable as long as there is liberty. Some would prosper because of talent, some because of good fortune, some because of an inheritance, but most would prosper because of hard work.

The entire American concept of "freedom to prosper" was based on the belief that man's instinctive will to succeed in a climate of liberty would result in the whole people prospering together. It was thought that even the poor could lift themselves through education and individual effort to become independent and self-sufficient.

The idea was to maximize prosperity, minimize poverty, and make the whole nation rich. Where people suffered the loss of their crops or became unemployed, the more fortunate were to help. And those who were enjoying "good times" were encouraged to save up in store for the misfortunes which seem to come to everybody someday. Hard work, frugality, thrift, and compassion became the key words in the American ethic.

Founders Attempted to Make the Welfare State Unconstitutional

What happened in America under these principles was remarkable in every way. Within a short time the Americans, as a people, were on the way to becoming the most prosperous and best-educated

nation in the world. This trend was already evident when de Tocqueville arrived from France in 1831. Furthermore, Americans were also the freest people in the world. Eventually, the world found that they were also the most generous people on earth. And all this was not because they were Americans. The Founders believed these same principles would work for any nation. The key was using the government to protect equal rights, not to provide equal things. Samuel Adams said the ideas of a welfare state were made unconstitutional by the Founders:

"The utopian schemes of leveling [redistribution of the wealth] and a community of goods [central ownership of all the means of production and distribution] are as visionary and impracticable as those which vest all property in the Crown. [These ideas] are arbitrary, despotic, and, in our government, unconstitutional."[8]

The Founders Had a Deep Concern for the Poor and Needy

Disciples of the collectivist Left in the Founders' day as well as our own have insisted that compassion for the poor requires that the federal government become involved in taking from the "haves" and giving to the "have nots." Benjamin Franklin had been one of the "have nots," and after living several years in England where he saw government welfare programs in operation, he had considerable to say about these public charities and their counterproductive compassion.

Franklin wrote a whole essay on the subject and told one of his friends: "I have long been of your opinion, that your legal provision for the poor [in England] is a very great evil, operating as it does to the encouragement of idleness. We have followed your example, and begin now to see our error, and, I hope, shall reform it."[9]

A survey of Franklin's views on counterproductive compassion might be summarized as follows:

1. Compassion which gives a drunk the means to increase his drunkenness is counterproductive.[10]
2. Compassion which breeds debilitating dependency and weakness is counterproductive.[11]
3. Compassion which blunts the desire or necessity to work for a living is counterproductive.[12]
4. Compassion which smothers the instinct to strive and excel is counterproductive.[13]

Nevertheless, the Founders recognized that it is a mandate of God to help the poor and underprivileged. It is interesting how they said this should be done.

The Founders' Formula for "Calculated" Compassion

Franklin wrote: "To relieve the misfortunes of our fellow creatures is concurring with the Deity; it is godlike; but, if we provide encouragement for laziness, and supports for folly, may we not be found fighting against the order of God and Nature, which perhaps has appointed want and misery as the proper punishments for, and cautions against, as well as necessary consequences of, idleness and extravagance? Whenever we attempt to amend the scheme of Providence, and to interfere with the government of the world, we had need be very circumspect, lest we do more harm than good."[14]

Nearly all of the Founders seem to have acquired deep convictions that assisting those in need had to be done through means which might be called "calculated"

compassion. Highlights from their writings suggest the following:

1. Do not completely care for the needy — merely help them to help themselves.
2. Give the poor the satisfaction of "earned achievement" instead of rewarding them without achievement.
3. Allow the poor to climb the "appreciation ladder" — from tents to cabins, cabins to cottages, cottages to comfortable houses.
4. Where emergency help is provided, do not prolong it to the point where it becomes habitual.
5. Strictly enforce the scale of "fixed responsibility." The first and foremost level of responsibility is with the individual himself; the second level is the family; then the church; next the community; finally the county, and, in a disaster or emergency, the state. Under no circumstances was the federal government to become involved in public welfare. The Founders felt it would corrupt the government and also the poor. No constitutional authority exists for the federal government to participate in so-called social welfare programs.

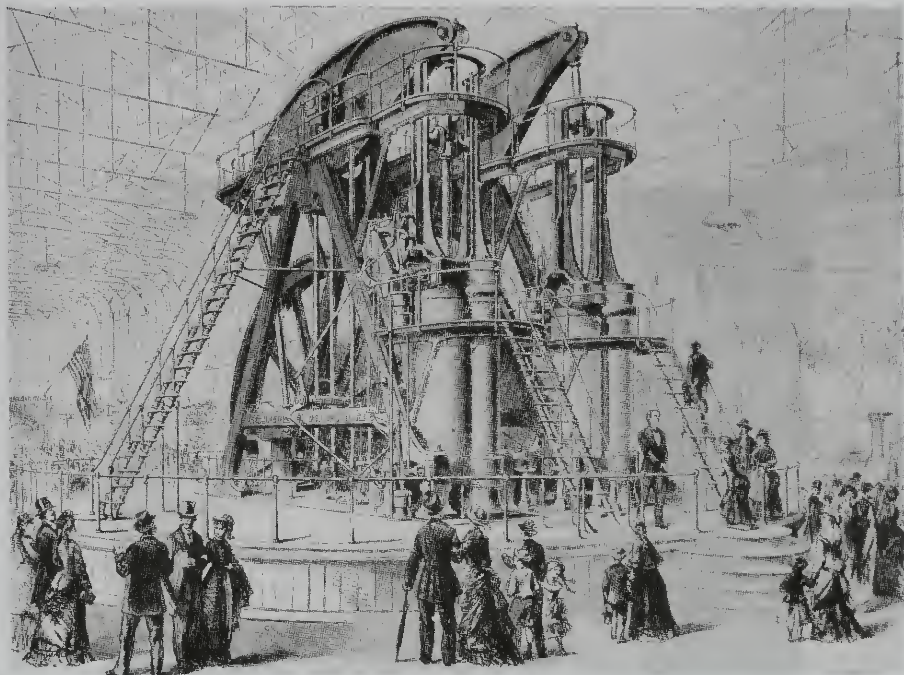
Conclusion

Now, all of this seems to lead us to some interesting conclusions. It tells us that after two hundred years of exploration and experimentation with all kinds of economic principles and practices, Adam Smith and the Founding Fathers get high scores for the pragmatic proof that their concepts of prosperity economics are sound. Those principles worked for the United States when it was a developing nation and helped it to become the richest nation in the world. They have worked for every other country that has been willing to try them. They were phenomenally successful when they were used by West Germany after World War II. They soon gave the bomb-rubbled cities of that nation the highest standard of living in Europe in less than a dozen years; even higher than Sweden, which wasn't in the war.

Even military dictatorships and one-party countries are finding that their people will prosper if the government will allow a free-market system to operate.

Red China has become sufficiently impressed to begin copying the success of Taiwan, Korea, Singapore, and other centralized governments which are flourishing under the free-market system. The western world was astonished when the Red Chinese leaders suddenly abolished their bare-subsistence communes and invited the peasants to "get rich" as private farmers. Of course, the Chinese communists did not dare call their new policy "free-enterprise capitalism." They called it "enriched Marxism."

But regardless of the name, if people are allowed economic freedom it will tend to gradually open up the channels for political freedom in the years to come. This is why the message of freedom — both economic and political — should become America's greatest export.



These giant stationary engines, which were part of the 1876 Centennial exhibit, reflected the promise and hope of American free enterprise.

---

1. Fred Albert Shannon, *Economic History of the People of the United States* (New York: The Macmillan Co., 1934), p. 500.

2. D.T. Armentano, *The Myths of Antitrust* (New Rochelle, N.Y.: Arlington House, 1972), p. 83.

3. 241 U.S. 417.

4. Robert E. Taylor, "A Talk with Antitrust Chief William Baxter," *The Wall Street Journal*, 4 March 1982.

5. Introduction to *The Wealth of Nations*, "Heirloom Edition," 2 vols. (New Rochelle, N.Y.: Arlington House, n.d.), p. v.

6. Ibid., pp. v–vi.

7. Ibid., p. vi.

8. Quoted in William V. Wells, *The Life and Public Service of Samuel Adams*, 3 vols. (Boston: Little, Brown and Company, 1865), 1:154.

9. Smyth, *The Writings of Benjamin Franklin*, 10:64.

10. Ibid., 5:538.

11. Ibid., p. 123.

12. Ibid., 3:135–36.

13. Ibid., pp. 136–37.

14. Ibid., p. 135.

THE

FEDERALIST:

A COLLECTION

OF

E S S A Y S,

WRITTEN IN FAVOUR OF THE

NEW CONSTITUTION,

AS AGREED UPON BY THE FEDERAL CONVENTION,
SEPTEMBER 17, 1787.

IN TWO VOLUMES.

VOL. I.

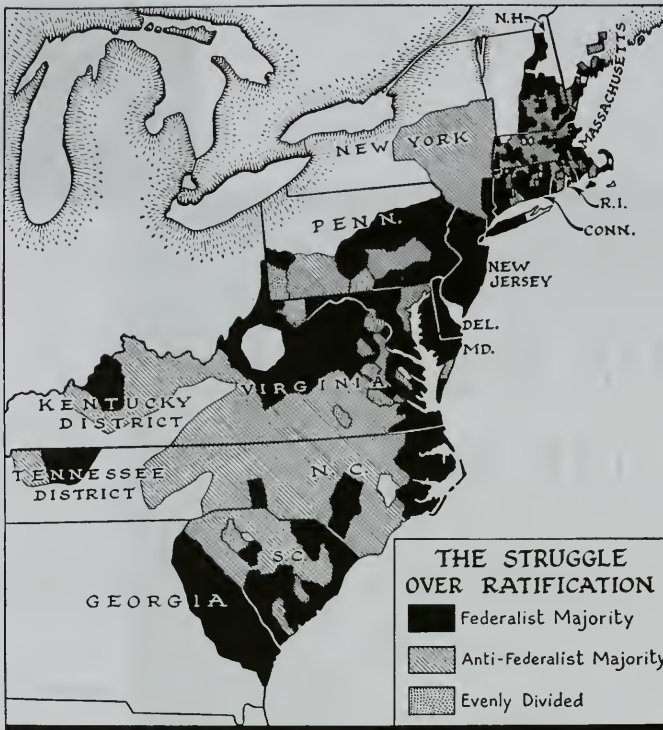
NEW-YORK:

PRINTED AND SOLD BY J. AND A. M'LEAN.
No. 41, HANOVER-SQUARE,
M,DCC,LXXXVIII.

CHAPTER

THE BAPTISM OF FIRE

No doubt there was an element of excited anticipation as the Constitution was signed by the delegates on September 17, 1787, and sent along with a cover letter from George Washington to the members of Congress in New York City. The delegates had passed through the heat of debate to formulate a completely new kind of national government, and now they would learn how well it might fare with their colleagues in Congress. Fortunately, several members of the Constitutional Convention were members of Congress, and therefore they were immediately available to answer questions and soothe the ruffled feathers of any who might be shocked by the many new and highly innovative provisions of the Constitution.



Most of the states were bitterly divided over the ratification of the Constitution.

The results of the effort were heartening. After only eight days of hearings, the Congress approved the Constitution without making any changes and sent it to the states.

The Constitution Creates an Explosion Among the States

Even while the Congress was considering the merits of the Constitution, the people were beginning to scrutinize it for themselves. The moment copies of the new charter were made public, the *Pennsylvania Packet* threw out all other news stories and published the entire Constitution under the headline, "We the People of the United States."

The initial reaction was a general state of alarm. The public had been led to expect a few simple amendments to the Articles of Confederation. Instead, they were being asked to ratify a completely new "three-headed monstrosity," the like of which the world had never seen in modern times.

It is interesting that the members of the Constitutional Convention did not seem too surprised by the initial wave of hostility which rose up against their political handiwork. They seem to have expected it. After all, they had taken four months to satisfy themselves by painfully debating each point to the depth. Certainly they could not expect their neighbors to embrace so many non-traditional ideas in one gulp.

In Virginia the word spread rapidly that the revered and highly respected George Mason had refused to sign the Constitution. Many patriots who were suspicious

of any document as new and different as the Constitution immediately sought out Mason to learn the reason why he hadn't signed.

And he had reason. His most important objections were as follows:

1. It provided no bill of rights. The subject had been discussed at considerable length at the Convention, but the delegates had decided that a bill of rights would be dangerous and unnecessary. It had been argued that it is impossible to remember all of one's rights and any which might be accidentally overlooked would be presumed to be forfeited. Furthermore, since the new government would be one of limited power and restricted to specifically enumerated subjects, there was no need to provide a bill of rights to cover activities over which the new national government would have no power to act. But all of this did not convince George Mason, and he soon convinced a lot of leading Viriginia patriots that he was right, including Patrick Henry, former governor of the state.

2. George Mason also felt that the office of President was too powerful and might easily develop into a dictatorship with power to abuse the people. The Founders wanted a strong, energetic President, but limited his authority to a carefully restricted list of enumerated powers. George Mason rejected this approach. He preferred a weak President, shackled with constitutional chains.

3. He also thought the office of Vice President was superfluous — a completely unnecessary expense. This was a new office with which the people had never had any experience, and George Mason thought it was an exercise in extravagant futility.

4. It also worried George Mason that there was no specific provision for a cabinet or council to guide the President in making decisions. The Constitution did provide that the President could require written reports from the heads of departments, but this was insufficient to satisfy George Mason. As time would demonstrate, there was a definite need for such a council and it came into existence as the "cabinet" from sheer necessity even though there was no specific provision for it in the Constitution.

5. George Mason also saw the federal courts as a very real threat to the independence and integrity of the state courts. He anticipated the encroachment of the stronger national system on the prerogatives of the individual state judiciaries. Here again his concerns were verified by the passing of time. Jefferson denounced this threatening encroachment during his latter days. However, he pointed out that the problem was not in the Constitution itself but in the failure of the writers to provide adequate checks on the federal courts so that the states would be better protected.

We should also mention that among the delegates who were still in attendance at the close of the Constitutional Convention, there were two others who did not sign. One was Elbridge Gerry of Massachusetts, and the other was Governor Edmund Randolph of Virginia. The major concerns of both men centered around the fact that the Constitution did not include a bill of rights. When Randolph was assured by George Washington that this deficiency would be remedied at the first session of the new Congress, he realigned his position and became one of the foremost advocates for ratification at the Virginia convention.

The Ratification Conventions

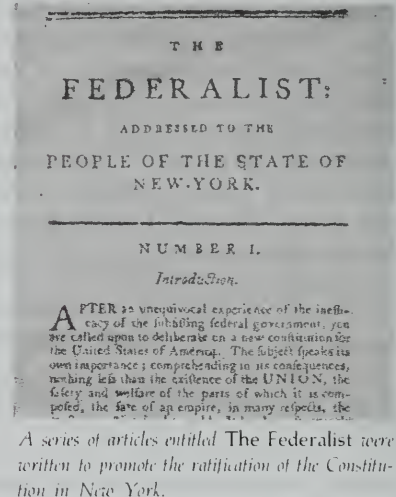
The furious debates which erupted during the ratification conventions accomplished several important things.

First of all, the Constitution's many unique features created such a climate of controversy that thousands felt compelled to study it who might never have done so otherwise. The convention debates reveal that the delegates elected by the people were well versed in its contents and came prepared to stoutly argue either for or against it.

Furthermore, the debates brought out a number of weaknesses that the original writers of the Constitution had overlooked. Franklin and others had noted some of these weaknesses, but did not desire to make an issue of them lest the effort to patch a few flaws in the fabric might result in the destruction of the whole constitutional tapestry. Franklin's closing speech at the Convention had reflected his willingness to take the Constitution with its few weaknesses so that the nation could get on with the business of a sound general government and work out minor deficiencies later on. This plea had gotten the document through the original convention in Philadelphia, but the antagonists would not let it pass at the ratification conventions. The continuous conflict over some of these minor problems finally led George Washington and others to promise the state conventions that if they would approve the Constitution in its present form, the states could each submit suggestions for amendments and these would be taken up in the first session of Congress.

The states took this invitation literally. They submitted a total of 189 proposed changes!

At the first session of Congress these suggestions were reduced to seventeen major amendments by James Madison, and twelve were approved by Congress and submitted to the states. Ten were ratified by the states, and these are what became known as the Bill of Rights. One of those which was not approved was later included in the Fourteenth Amendment. The final one related to the compensation of the members of Congress and was not considered to be of sufficient substantive merit to be part of the Constitution.



THE

FEDERALIST:

ADDRESSED TO THE

PEOPLE OF THE STATE OF NEW-YORK.

NUMBER I.

Introduction.

AFTER an unequivocal experience of the inefficacy of the subsisting federal government, you are called upon to deliberate on a new constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences, nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire, in many respects, the

A series of articles entitled The Federalist *were written to promote the ratification of the Constitution in New York.*

The Federalist Papers

One of the important contributions to emerge from the ratification debates was a series of newspaper articles which were written in desperation when Hamilton discovered that the state of New York was probably going to reject the Constitution. He rallied the support of John Jay, who later became the first chief justice of the Supreme Court, as well as the talents of James Madison, the "father of the Constitution," to help him write these articles.

These three stalwarts analyzed almost every phrase of the Constitution so it

could be better understood by the people. They also pointed out how defective the Articles of Confederation had been and the urgent necessity to restructure the entire framework of government.

As it turned out, the final ratification of the Constitution was influenced more by the personal talents of Alexander Hamilton than by the arguments of these newspaper articles. However, the series was subsequently published as the eighty-five *Federalist Papers* and became the most valuable literature available in determining the intent of the Founders when they wrote the nation's original charter of government.

For many years it was difficult to determine who had written each of the articles. Hamilton, Madison, and Jay had all written under the name of PUBLIUS. In recent years, a careful analysis by competent scholars has now settled the question of authorship for practically all of the articles, and modern editions of the *Federalist Papers* indicate the author of each one.

Voices from Overseas

Many delegates to the various state conventions were impressed by the enthusiastic support for the Constitution which came from America's principal ambassadors in Europe. One was Thomas Jefferson, minister to France, and the other was John Adams, minister to England. Both of them had some reservations concerning minor aspects of the Constitution, but when they learned that a bill of rights would be provided they endorsed the Constitution with warm approval.

Thomas Jefferson wrote: "The example of changing a constitution by assembling wise men of the state, instead of assembling armies, will be worth as much to the world as former examples we have given them [such as the Declaration of Independence]. The Constitution is...unquestionably the wisest ever yet presented to men."[1]

John Adams wrote that the new Constitution was "the greatest single effort of national deliberation that the world has ever seen."[2]

The Race to Ratify the Constitution

Pennsylvania had hoped to be the first state to ratify the Constitution. However, on December 6, 1787, Delaware adopted the Constitution by a unanimous vote of approval.

Pennsylvania came four days later and approved the Constitution on December 12, 1787, by a vote of 46 to 23.

New Jersey ratified six days after that on December 18, with a unanimous vote.

Georgia came through on January 2, 1788, with a unanimous vote.

Connecticut ratified January 9, 1788, with a vote of 128 in favor and 40 opposed.

It appeared for some time that the second largest state, Massachusetts, might reject the Constitution, but when Sam Adams and John Hancock finally got around to supporting it, the vote of approval narrowly succeeded with a final tally of 187 in favor compared to 168 opposed. This was a spread of only 19 votes. If 10 more delegates had voted against ratification the great state of Massachusetts would have been left out of the Union.

Maryland ratified April 26, 1788, with a vote of 63 to 11.

South Carolina ratified on May 23, 1788, with a vote of 149 to 73.

New Hampshire was the state which made the Constitution operational. Article VII stated that the Constitution would

Mainly through the tireless efforts of Alexander Hamilton, New York ratified the Constitution by a very narrow vote.

go into effect as soon as nine states had ratified. New Hampshire ratified on June 21, 1788, by a vote of 57 to 46. A switch of six votes would have reversed the outcome. Even so, no formal action was taken to immediately implement the Constitution because the conventions in New York and Virginia were on the verge of reaching a conclusion and the other states wanted to make sure that these two important partners were part of the team.

Within a week after the New Hampshire vote, Virginia finally ratified on June 26, by a vote of 89 to 79. A switch of five votes would have meant defeat!

New York had one of the most bitter battles of all, but finally, a month after the Virginia vote, New York ratified on July 26 by a final tally of 30 to 27. A switch of 2 votes would have changed the outcome.

North Carolina had to hold two conventions to get a final determination of how the delegates wanted to vote. As a result, it was nearly sixteen months after New York came into the Union that North Carolina ratified at her second convention on November 21, 1789, with a vote of 194 to 77.

Rhode Island was a case all by itself. Her leaders seemed perfectly content to stay aloof and independent from the rest of the states. As a result, they made no attempt to even hold a convention until the rest of the states angrily threatened to begin treating her as a foreign nation. When the Senate suddenly voted to cut off all commercial relations with Rhode

An allegorical cartoon in The Columbian Magazine, *1788, saluted the unity achieved by the states through the Constitution.*

Island, her leaders awakened to the seriousness of the situation. She finally squeezed into the union on May 29, 1790 (after the Constitution had been functioning for two years), but the vote was a skimpy 34 to 32. One more opposition vote could have kept Rhode Island out of the Union.

Rebirth of a Nation

Under its new Constitution, the United States of America was reborn. No longer was she a confederation of states, but a government "of the people." Presidential electors were chosen by each of the states on January 7, 1789—some selected by the state legislatures, some by the people themselves. This was all done before the Twelfth Amendment, of course, so each elector voted for two persons. It was provided in the original Constitution that the person who received the most votes would be President and the one receiving the next highest number of votes would be Vice President. It is important to appreciate that there were no political parties and therefore everyone anticipated that there would be many candidates for these offices—at least a favorite son from each state!

The Congress now needed to be organized so the electoral votes could be officially counted. The House of Representatives convened on April 1, 1789, with 59 elected Representatives present. The Senate was organized on April 6, 1789, and a joint session of both houses convened on that same date to see who would be President. The results came as no surprise. George Washington was elected unanimously as President (69 electoral votes), and John Adams came in next highest with 34 votes, so he became Vice President.

On April 15 the *Gazette* or *Annals of Congress* began its publication. Today it is called the *Congressional Record.*

On April 30, George Washington was inaugurated in the Senate Chamber of Federal Hall in New York City. His estate was still suffering severely from the ravages of the Revolutionary War and his own eight-year absence. He therefore had to borrow money to attend his own inaugural.

On September 11, President Washington appointed Alexander Hamilton as his Secretary of the Treasury. That same day he also appointed hefty General Henry Knox to be Secretary of War.

On September 24, the federal court system was set up with the Supreme Court at the head, one federal district

court in each state, and three federal circuit courts of appeals. Two days later, John Jay was appointed the first Chief Justice of the United States Supreme Court.

On September 26, Edmund Randolph, former governor of Virginia, was appointed Attorney General of the United States. It will be recalled that he refused to sign the Constitution because it had no bill of rights. However, when he was assured that one would be added, he fought vigorously for ratification by Virginia.

On this same date, Thomas Jefferson, who had returned from France, was appointed Secretary of State.

President Washington created the United States Army on September 29, 1789. However, he was allowed to enroll only 1,000 soldiers. The Congress was taking no chance on a "large standing army in peacetime"!

We have already referred to the 189 suggested amendments which were sent in by the states at the time of their ratification conventions. James Madison reduced the number of these proposals down to 17, and 12 of these were approved by Congress on September 25, 1789. Later, 10 of them were ratified by the states as we have already mentioned.

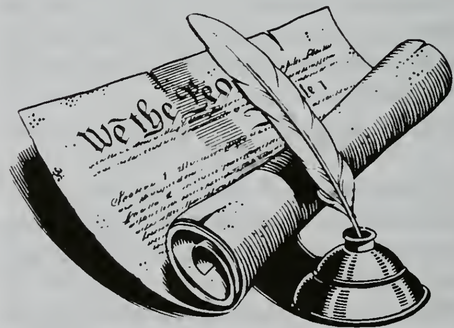
The Game Plan and the Book of Instructions

At this point the American ship of state was fully launched. Would it survive? Would it prosper? Would it occupy a steady position on Step Seven so it could prepare to make the ultimate leap to Step Eight? The Founders were enthusiastic and optimistic. They had developed their game plan and provided a constitutional book of instructions. As for the future, James Madison said it was all being turned over to "their successors to preserve and perpetuate."[3]

The American game plan called for a divided, balanced, limited form of government. We will now examine nearly 300 separate principles which the Founders and subsequent leaders debated, researched, and evaluated before they were included in the Constitution.

We will commence with the Preamble, which had an interesting origin. The Committee on Detail had made up a very modest preamble but it was unacceptable to the Committee on Style, especially the chairman, Gouverneur Morris. Morris was a 36-year-old bachelor who was not only a talented lawyer with a gifted pen, but was also prominent in the field of finance. He had lost a leg in an accident and was not the least embarrassed about his wooden leg, which he would use to thump the floor when he approved of a speech or a performance.

Gouverneur Morris was quite certain that very few people would bother to read the text of the Constitution, and so he wanted to set forth in the Preamble the six magnificent objectives which the Founders intended this form of government would attain. It turned out that this was the first time that these six criteria



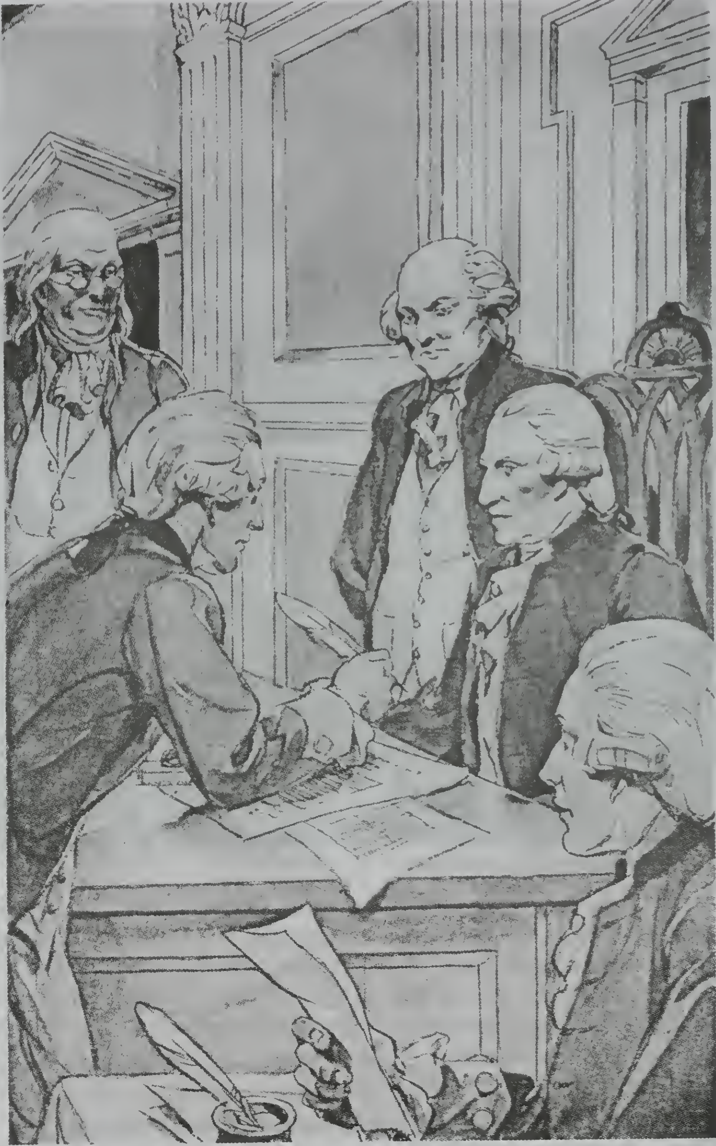
Gouverneur Morris made a truly significant contribution to the Constitution when he wrote its preamble.

Local leaders announce the newly ratified Constitution in a frontier community.

for sound government had ever been recorded. Political scientists have since admired the insight of Morris in listing these six goals. They feel he incorporated everything important which should have been included and listed nothing superfluous which should have been left out. This turned out to be a first-class sales piece.

As we have already discovered, Gouverneur Morris was in error when he thought that only a few Americans would read the actual text of the Constitution. The storm of controversy which inflamed the public mind induced thousands to study it carefully. Nevertheless, his original assumption provoked Morris to write an inspired Preamble, which we will now examine. Before analyzing each of its principles, let us review the poetic power of the full text:

We, the people of the United States,
In order to form
A more perfect union,
Establish justice,
Insure domestic tranquility,
Provide for the common defense,
Promote the general welfare,
And secure the blessings of liberty
To ourselves and our posterity,
Do ordain and establish
This Constitution
For the United States of America.



The signing of the Constitution, September 17, 1787.

PROVISION 1

From the Preamble

This Constitution is ordained and established by "We the people."

This principle recognized the unalienable RIGHT of the people of the United States to govern themselves.

In no country on earth were there political leaders who had more confidence in the people than those who structured the government of the United States. In his two essays on civil government, John Locke proved that there is no such thing as a divine right of kings to rule over the people. Then who does have the right? Locke demonstrated that since the Creator has endowed each individual with free agency and the right to control his own affairs, the right to govern is therefore in the people themselves, and no one has the right to rule unless the majority of the people have elected that person to occupy his or her high office.

In commenting on this first principle, the Founders answered the following questions:

- *Why should the power base of any government rest on the people themselves?*

All Authority in the People

Jefferson: "I consider the people who constitute a society or nation as the source of all authority in that nation."[4]

"All authority belongs to the people."[5]

The People Are the Only Safe Depository of Power

Jefferson: "I know no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education. This is the true corrective of abuses of constitutional power."[6]

Government Should Be Controlled by the People

Jefferson: "Every government degenerates when trusted to the rulers of the people alone. The people themselves, therefore, are its only safe depositories. And to render even them safe, their minds must be improved to a certain degree."[7]

Instinct of the People to Preserve Freedom

Jefferson: "The people, especially when moderately instructed, are the only safe, because the only honest, depositories of the public rights, and should therefore be introduced into the administration of them in every function to which they are sufficient. They will err sometimes and accidentally, but never designedly and with a systematic and persevering purpose of overthrowing the free principles of the government."[8]

Discernment of the People

Jefferson: "The firmness with which the people have withstood the late abuses of the press, the discernment they have manifested between truth and falsehood, show that they may safely be trusted to

hear everything true and false, and to form a correct judgment between them."[9]

• *What is necessary so that people can be trusted to use their political power intelligently and with justice?*

Duty of Rulers Toward the People

Jefferson: "To inform the minds of the people and to follow their will is the chief duty of those placed at their head."[10]

"If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be. The functionaries of every government have propensities to command at will the liberty and property of their constituents. There is no safe deposit for these but with the people themselves; nor can they be safe with them without information. Where the press is free, and every man able to read, all is safe."[11]

People Must Be Taught Correct, Virtuous Principles

Jefferson: "[A] people [can become] so demoralized and depraved as to be incapable of exercising a wholesome control.... Their minds [are] to be informed by education what is right and what wrong, to be encouraged in habits of virtue and deterred from those of vice by the dread of punishments, proportioned, indeed, but irremissible; in all cases, to follow truth as the only safe guide and to eschew error, which bewilders us in one false consequence after another in endless succession. These are the inculcations necessary to render the people a sure basis for the structure of order and good government."[12]

• *How can delegates selected by the state legislatures propose a constitution for the people?*

The Founders Were State Delegates but Proposed the Constitution for the People

MacLaine: "The gentlemen who framed it were not the representatives of the people; they ... were delegated by states.... They did not think that they were the people, but intended it for the people, at a future day.... It was to be submitted by the legislatures to the people; so that, when it is adopted, it is the act of the people."[13]

• *Was the Constitution merely a proposal, or was it a mandate?*

Constitution a Proposal to the People, Not a Mandate

Pendleton: "This Constitution was transmitted to Congress by that Convention; by the Congress transmitted to our legislature; by them recommended to the people; the people have sent us hither to determine whether this government be a proper one or not."[14]

• *What is the difference between a league or compact between states and a constitution derived from the people themselves?*

Constitution Not a Compact—Must Be Adopted by the People

Madison: "Thought it clear that the legislatures were incompetent to the proposed changes. These changes would make essential inroads on the state constitutions, and it would be a novel and dangerous doctrine that a legislature could change the constitution under which it held its existence.... He considered the difference between a system founded on the legislatures only, and one founded on the

people, to be the true difference between a *league* or *treaty*, and a *constitution*.... The doctrine laid down by the law of nations in the case of treaties is that a breach of any one article by any of the parties, frees the other parties from their engagements. In the case of a union of people under one constitution, the nature of the pact has always been understood to exclude such an interpretation.... He thought all the considerations ... were in favor of state conventions [of the people] in preference to the legislatures for examining and adopting it."[15]

PROVISION

2

From the Preamble

The first goal of sound government is to provide a more perfect union.

This principle recognized the RIGHT of the people of the United States to live in a solidly structured nation where all of the states are combined in a perpetual union.

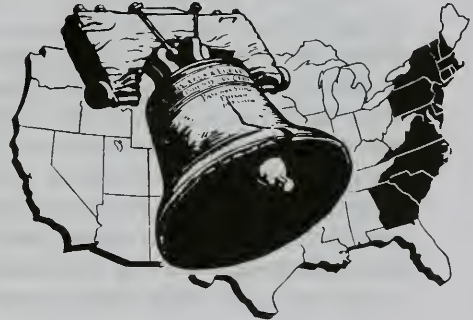
Historian George Bancroft points out that between 1643 and 1776 there were at least fifty proposals or outright attempts to unify the English colonies in America. All previous attempts failed.[16]

The fragile and delicate qualities of a permanent union make it a precious and yet an elusive achievement. This is demonstrated by the fact that New England was thinking of seceding from the Union clear up to the end of the War of 1812.

It is further demonstrated by the fact that Simon Bolivar sacrificed his high office and his fortune to liberate the major Latin American countries from the yoke of Spain. Yet his attempt to get them to unite as the United States had done was a failure. He died at the age of 47 in exile and poverty, saying, "Those who have toiled for liberty in South America have plowed the sea." The seeds of union could not be planted in such billowing furrows of flotsam and foam.

The fact that the Founders finally structured a great republic out of thirteen independent and sovereign states was a monumental achievement. The comments of the Founders on the subject of "union" answer the following questions:

- *What are the immediate advantages of a strong union?*



The Preamble stated that one purpose of the Constitution was to bind the states more strongly together.

Specific Advantages of a Union

Hamilton: "The principal purposes to be answered by union are these—the common defense of the members; the preservation of the public peace, as well against internal convulsions as external attacks; the regulation of commerce with other nations and between the States; the superintendence of our intercourse, political and commercial, with foreign countries."[17]

• *If the states remain independent or formulate several small confederacies, what risks are involved?*

What to Expect If States Continue as a Loose Confederation

Jay: "Leave America divided into thirteen or, if you please, into three or four independent governments—what armies could they raise and pay—what fleets could they ever hope to have? If one was attacked, would the others fly to its succor and spend their blood and money in its defense? Would there be no danger of their being flattered into neutrality by specious promises, or seduced by a too great fondness for peace to decline hazarding their tranquillity and present safety for sake of neighbors, of whom perhaps they have been jealous, and whose importance they are content to see diminished? . . .

"But admit that they might be willing to help the invaded State or confederacy. How, and when, and in what proportion shall aids of men and money be afforded? Who shall command the allied armies, and from which of them shall he receive his orders? Who shall settle the terms of peace, and in case of disputes what umpire shall decide between them and compel acquiescence? Various difficulties and inconveniences would be inseparable from such a situation; whereas one government, watching over the general and common interests and combining and directing the powers and resources of the whole, would be free from all these embarrassments and conduce far more to the safety of the people. . . .

"If they see that our national government is efficient and well administered, our trade prudently regulated, our militia properly organized and disciplined, our resources and finances discreetly managed, our credit reestablished, our people free, contented, and united, they will be much more disposed to cultivate our friendship than provoke our resentment. If, on the other hand, they find us either destitute of an effectual government (each State doing right or wrong, as to its rulers may seem convenient), or split into three or four independent and probably discordant republics or confederacies, one inclining to Britain, another to France, and a third to Spain, and perhaps played off against each other by the three, what a poor, pitiful figure will America make in their eyes! How liable would she become not only to their contempt, but to their outrage; and how soon would dear-bought experience proclaim that when a people or family so divide, it never fails to be against themselves."[18]

• *How would a loose-knit confederation lead to wars in the west?*

A Strong Union Needed to Prevent Territorial Wars in the West

Hamilton: "Territorial disputes have at all times been found one of the most fertile sources of hostility among nations. Perhaps the greatest proportion of wars that have desolated the earth have sprung from this origin. This cause would exist among us in full force. We have a vast

tract of unsettled territory within the boundaries of the United States. There still are discordant and undecided claims between several of them, and the dissolution of the Union would lay a foundation for similar claims between them all.... In the wide field of Western territory, therefore, we perceive an ample theater for hostile pretensions, without any umpire or common judge to interpose between the contending parties. To reason from the past to the future, we shall have good ground to apprehend that the sword would sometimes be appealed to as the arbiter of their differences."[19]

• *What is the one thing for which a free people will sacrifice civil liberty?*

To Be United and Safe, People Will Sacrifice Some of Their Liberty

Hamilton: "Safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates. The violent destruction of life and property incident to war, the continual effort and alarm attendant on a state of continual danger, will compel nations the most attached to liberty to resort for repose and security to institutions which have a tendency to destroy their civil and political rights. To be more safe, they at length become willing to run the risk of being less free.

"The institutions chiefly alluded to are STANDING ARMIES and the correspondent appendages of military establishments.... Standing armies ... must inevitably result from a dissolution of the Confederacy. Frequent war and constant apprehension, which require a state of constant preparation, will infallibly produce them. The weaker States, or confederacies, would first have recourse to them to put themselves upon an equality with their more potent neighbors. They would endeavor to supply the inferiority of population and resources by a more regular and effective system of defense, by disciplined troops, and by fortifications. They would, at the same time, be necessitated to strengthen the executive arm of government, in doing which their constitutions would acquire a progressive direction towards monarchy. It is of the nature of war to increase the executive at the expense of the legislative authority....

"Thus we should, in a little time, see established in every part of this country the same engines of despotism which have been the scourge of the old world....

"The perpetual menacings of danger oblige the government to be always prepared to repel it; its armies must be numerous enough for instant defense. The continual necessity for their services enhances the importance of the soldier, and proportionably degrades the condition of the citizen. The military state becomes elevated above the civil.... By degrees the people are brought to consider the soldiery not only as their protectors but as their superiors. The transition from this disposition to that of considering them masters is neither remote nor difficult; but it is very difficult to prevail upon a people under such impressions to make a bold or effectual resistance to usurpations supported by the military power....

"If we should be disunited, and the integral parts should either remain separated, or, which is most probable, should be thrown together into two or three confederacies, we should be, in a short course of time, in the predicament of the continental powers of Europe—our liberties would be a prey to the means of defending ourselves against the ambition and jealousy of each other."[20]

• *In what way do commerce and transportation facilitate a feeling of union?*

Commerce and Transportation Have a Unifying Influence

Madison: "We have seen the necessity of the Union as our bulwark against foreign danger, as the conservator of peace among ourselves, as the guardian of our commerce and other common interests, as the only substitute for those military establishments which have subverted the liberties of the old world, and as the proper antidote for the diseases of faction, which have proved fatal to other popular governments.... The immediate object of the federal Constitution is to secure the union of the ... States ... and to add to them such other States as may arise.... Intercourse throughout the Union will be facilitated by new improvements. Roads will everywhere be shortened and kept in better order; accommodations for travelers will be multiplied and meliorated; ... interior navigation ... will be rendered more and more easy."[21]

• *Why do small, weak states require standing armies and heavy taxes?*

Disunion Invites Standing Armies and Perpetual Taxes

Madison: "America united, with a handful of troops, or without a single soldier, exhibits a more forbidding posture to foreign ambition than America disunited, with a hundred thousand veterans ready for combat.... A dangerous establishment can never be necessary or plausible, so long as they continue a united people. But let it never for a moment be forgotten that they are indebted for this advantage to the Union alone. The moment of its dissolution will be the date of a new order of things.... It will present liberty everywhere crushed between standing armies and perpetual taxes....

"This picture of the consequences of disunion cannot be too highly colored, or too often exhibited. Every man who loves peace, every man who loves his country, every man who loves liberty ought to have it ever before his eyes that he may cherish in his heart a due attachment to the Union of America and be able to set a due value on the means of preserving it."[22]

Hamilton: "Some of the consequences of a dissolution of the Union, and the establishment of partial confederacies had been pointed out. He would add another of a most serious nature. Alliances will immediately be formed with different rival and hostile nations of Europe, who will foment disturbances among ourselves and make us parties to all their own quarrels. Foreign nations having American dominion are, and must be, jealous of us. Their representatives betray the utmost anxiety for our fate, and for the result of this meeting, which must have an essential influence on it. It had been said that respectability in the eyes of foreign nations was not the object at which we aimed; that the proper object of republican government was domestic tranquillity and happiness. This was an ideal distinction. No government could give us tranquillity and happiness at home which did not possess sufficient stability and strength to make us respectable abroad."[23]

• *What is America's responsibility to the world?*

America Must Show the World that Man is Capable of Self-government.

Jefferson: "We owe every other sacrifice to ourselves, to our federal brethren, and

to the world at large to pursue with temper and perseverance the great experiment which shall prove that man is capable of living in [a] society governing itself by laws self-imposed, and securing to its members the enjoyment of life, liberty, property, and peace; and further, to show that even when the government of its choice shall manifest a tendency to degeneracy, we are not at once to despair, but that the will and the watchfulness of its sounder parts will reform its aberrations, recall it to original and legitimate principles, and restrain it within the rightful limits of self-government."[24]

PROVISION 3

From the Preamble

This Constitution is designed to provide equal justice for all.

This provision anticipates the RIGHT of every inhabitant of the United States to be protected in his life and liberty and to be treated as innocent until proven guilty when brought before the bar of justice.

In the Declaration of Independence Thomas Jefferson had written that "all men ... are endowed by their Creator with certain unalienable rights,...[and] to secure these rights, governments are instituted."

When a government protects the rights of its people and provides an adequate remedy for those whose rights have been violated, then that government is providing equal justice for all.

Justice requires an opportunity and a place to complain of an injury as well as the machinery to provide a remedy. For the accused, justice requires the opportunity to hear and understand the charge, cross-examine those who are making the charge, have a fair and speedy trial, and have an opportunity to repair the wrong if found guilty.

Nothing destroys the credibility of a government faster than its failure to provide fair and equal justice for its people.

In discussing this topic, James Madison and Thomas Jefferson provide answers to the following questions:

- *Why does it take an enlarged union to safeguard the people from injustice and abuse?*

An Enlarged Union Is Most Likely to Provide Justice

Madison: "A prudent regard to the maxim that honesty is the best policy is found by experience to be as little regarded by bodies of men as by individuals. Respect for character is always diminished in proportion to the number among whom the blame or praise is to be divided. Conscience, the only remaining tie, is known to be inadequate in individuals; in large numbers, little is to be expected from it. Besides, religion itself may become a motive to persecution and oppression. These observations are verified by

the histories of every country, ancient and modern. In Greece and Rome the rich and poor, the creditors and debtors, as well as the patricians and plebeians, alternately oppressed each other with equal unmercifulness. What a source of oppression was the relation between the parent cities of Rome, Athens, and Carthage, and their respective provinces: the former possessing the power and the latter being sufficiently distinguished to be separate objects of it. Why was America so justly apprehensive of parliamentary injustice? Because Great Britain had a separate interest, real or supposed, and, if her authority had been admitted, could have pursued that interest at our expense. We have seen the mere distinction of color made, in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man.

"What has been the source of those unjust laws complained of among ourselves? Has it not been the real or supposed interest of the major number? Debtors have defrauded their creditors. The landed interest has borne hard on the mercantile interest. The holders of one species of property have thrown a disproportion of taxes on the holders of another species. The lesson we are to draw from the whole is that where a majority are united by a common sentiment, and have an opportunity, the rights of the minor party become insecure. In a republican government, the majority, if united, have always an opportunity. The only remedy is to enlarge the sphere and thereby divide the community into so great a number of interests and parties that, in the first place, a majority will not be likely, at the same moment, to have a common interest separate from that of the whole, or of the minority; and in the second place, that in case they should have such an interest, they may not be so apt to unite in the pursuit of it. It was incumbent on us, then, to try this remedy, and, with that view, to frame a republican system on such a scale and in such a form as will control all the evils which have been experienced."[25]

• Is "Justice" an inborn sense or a rule of law?

Justice Is an Inborn Sense

Jefferson: "I believe . . . that [justice] is instinct and innate, that the moral sense is as much a part of our constitution as that of feeling, seeing, or hearing; as a wise Creator must have seen to be necessary in an animal destined to live in society; that every human mind feels pleasure in doing good to another; that the nonexistence of justice is not to be inferred from the fact that the same act is deemed virtuous and right in one society which is held vicious and wrong in another; because, as the circumstances and opinions of different societies vary, so the acts which may do them right or wrong must vary also; for virtue does not consist in the act we do, but in the end it is to effect. If it is to effect the happiness of him to whom it is directed, it is virtuous, while in a society under different circumstances and opinions, the same act might produce pain, and would be vicious. The essence of virtue is in doing good to others, while what is good may be one thing in one society, and its contrary in another."[26]

Man's Instinct for Justice

Jefferson: "Man was created for social intercourse, but social intercourse cannot be maintained without a sense of justice; then man must have been created with a sense of justice."[27]

• Why is it said that justice delayed is justice denied?

Indolence of King's Judges

Jefferson: "Before the Revolution, a judgment could not be obtained under eight years in the Supreme Court [of Virginia] where the suit was in the department of the common law, which department embraces about nine-tenths of the subjects of legal contestation. In that of the chancery, from twelve to twenty years were requisite. This did not proceed from any vice in the laws, but from the indolence of the judges appointed by the king; and these judges holding their office during his will only, he could have reformed the evil at any time. This reformation was among the first works of the legislature after our independence. A judgment can now be obtained in the Supreme Court in one year at the common law, and in about three years in the chancery."[28]

• *What is the main criterion in administering justice?*

Equal and Exact Justice

Jefferson: "I deem [one of] the essential principles of our government, and consequently [one] which ought to shape its administration, ... equal and exact justice to all men, of whatever state or persuasion, religious or political."[29]

Justice Must Be Even-Handed

Jefferson: "When one undertakes to administer justice, it must be with an even hand, and by rule; what is done for one must be done for everyone in equal degree."[30]

PROVISION 4

From the Preamble

This Constitution is designed to ensure peace, security, and domestic tranquility among the people.

This provision anticipates the RIGHT of the people to enjoy a state of law and order so that they can enjoy a sense of security and peace.

There is nothing more disruptive to orderly government and domestic tranquility than festering outbursts of mobocracy. Under the extreme tyranny and corruption of European monarchs, Jefferson felt that mankind must remember their unalienable right to rise up and take control of their affairs. However, when it came to boisterous mobs burning and looting their own cities, lynching their own citizens, and spreading havoc instead of restoring rights, then he was outraged. Said he: "The mobs of great cities add just so much to the support of pure government as sores do to the strength of the human body."[31]

The Constitution guaranteed to the states that federal forces would intervene if mobs or an invading enemy tried to overthrow the elected representatives of their republican form of government.[32] The Constitution also allowed the states to call upon federal forces to assist them in cases of domestic violence.[33]

The Founders provided substantive answers to a number of important questions which arise in connection with the responsibility of government to preserve law and order. For example:

• *How do we determine whose responsibility it is to maintain law and order?*

The Constitutional Division of Powers

Madison: "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.

"The operations of the federal government will be most extensive and important in times of war and danger; those of the State governments in times of peace and security. As the former periods will probably bear a small proportion to the latter, the State governments will here enjoy another advantage over the federal government. The more adequate, indeed, the federal powers may be rendered to the national defense, the less frequent will be those scenes of danger which might favor their ascendancy over the governments of the particular States."[34]

• *At what point does the national government intervene?*

National Government Intervenes Only When the State Is Too Feeble

Pendleton: "The two governments act in different manners, and for different purposes—the general government in great national concerns, in which we are interested in common with other members of the Union; the state legislature in our mere local concerns.... Our dearest rights—life, liberty, and property—as Virginians, are still in the hands of our state legislature. If they prove too feeble to protect us, we resort to the aid of the general government for security. The true distinction is, that the two governments are established for different purposes, and act on different objects.... If each power is confined within its proper bounds, and to its proper objects, ... interference can never happen."[35]

• *How can the states defend themselves if the federal government becomes overbearing?*

Two-Thirds of the States Can Reform the System

Wilson: "But, Sir, it has been intimated that the design of the federal convention was to absorb the state governments. This would introduce a strange doctrine indeed, that one body should seek the destruction of another, upon which its own preservation depends, or that the creature should eat up and consume the creator. The truth is, Sir, that the framers of this system were particularly anxious, and their work demonstrates their anxiety, to preserve the state governments unimpaired—it was their favorite object, and, perhaps, however proper it might be in itself, it is more difficult to defend the plan on account of the excessive caution used in that respect than from any other objection that has been offered here or

elsewhere. Hence, we have seen each state, without regard to their comparative importance, entitled to an equal representation in the Senate, and a clause has been introduced which enables two-thirds of the state legislatures at any time to propose and effectuate alterations in the general system."[36]

PROVISION 5

From the Preamble

This Constitution shall provide for a common defense against all enemies, both internally and externally.

This provision anticipated the RIGHT of the people to be protected from all enemies who might seek to conquer or destroy the United States.

Predatory, war-mongering nations use two methods of attack. One is invasion, the other is internal subversion. A common defense of the nation requires that the national government protect the states against both.

The Founders were unequivocal in their commitment to "peace through strength." They felt that a nation cannot remain free unless it remains strong. Benjamin Franklin wrote:

"The way to secure peace is to be prepared for war. They that are on their guard, and appear ready to receive their adversaries, are in much less danger of being attacked than the supine, secure and negligent."[37]

On this same theme George Washington declared: "To be prepared for war is one of the effectual means of preserving peace."[38] And on another occasion he said: "The safety of the United States, under Divine protection, ought to rest on the basis of systematic and solid arrangements, exposed as little as possible to the hazards of fortuitous circumstances."[39]

The Founders had much to say about the need for a common defense and the means by which it could be provided without the risk of a military takeover in time of peace. This entire subject will be discussed later when we come to the war powers under Article I, section 8. For the present, however, we will ask Alexander Hamilton to answer one major question:

- *What dangers posed a threat to the infant United States at the time the Constitution was adopted?*

United States Threatened by Britain, Spain and the Indians

Hamilton: "Though a wide ocean separates the United States from Europe, yet there are various considerations that warn us against an excess of confidence or security. On one side of us, and stretching far into our rear, are growing settlements subject to the dominion of Britain. On the other side, and extending to meet the British settlements, are colonies and establishments subject to the dominion of Spain. This situation and the vicinity of the West India Islands, belonging to these two powers, create between them, in respect to their American pos-

sessions and in relation to us, a common interest. The savage tribes on our Western frontier ought to be regarded as our natural enemies, their natural allies, because they have most to fear from us, and most to hope from them. The improvements in the art of navigation have, as to the facility of communication, rendered distant nations, in a great measure, neighbors. Britain and Spain are among the principal maritime powers of Europe. A future concert of views between these nations ought not to be regarded as improbable. The increasing remoteness of consanguinity is every day diminishing the force of the family compact between France and Spain. And politicians have ever with great reason considered the ties of blood as feeble and precarious links of political connection. These circumstances combined admonish us not to be too sanguine in considering ourselves as entirely out of the reach of danger."[40]

PROVISION 6
From the Preamble

This Constitution is designed to promote those practices and policies which shall be for the general welfare of the whole nation.

This provision anticipates the RIGHT of Americans to have its government serve the welfare of the people in their collective needs—that is, their GENERAL welfare—and not use the resources of the people for the benefit of certain states or certain people, which would be SPECIAL welfare.

The term "general welfare" was used in the Articles of Confederation and elsewhere to refer to the well-being of the whole people. Under monarchs the most objectionable element of the autocracy was the discriminatory manner in which favors and privileges were extended to the king's pets. Often the most deserving were deliberately snubbed while the less worthy received the king's royal accolades. It was therefore fundamental to a republic that the national government administer its power without prejudice, discrimination, or favoritism. Furthermore, the Founders did not want the power and resources of the federal government to be used for the special benefit of any one region or any one state. Nor were the resources of the people to be expended for the benefit of any particular group or any special class of citizens.

Of course, there were some, including Alexander Hamilton (when he became Secretary of the Treasury), who wanted to interpret the welfare clause as a general grant of power to the Congress to do anything which it felt was for the welfare of anyone or any part of the country. However, Jefferson and Madison were quick to point out that the federal government had been granted authority by the states to do only twenty things, and that each of these must be carried out for the GENERAL welfare of the whole nation. They said this meant that the welfare clause was designed as a restriction of power, not a grant of power.

PROVISION

7

From the Preamble

The Founders said the purpose of the Constitution would be to secure the blessings of liberty for themselves and their posterity.

This provision anticipated the RIGHT of all Americans to have their government continually engaged in the protection of the freedom of the people from generation to generation.

The Constitution was designed to provide a "divided, balanced, limited" government so that it would remain in the center of the political spectrum and not drift toward anarchy or tyranny.

The Founders were well aware, however, that no structure of government, regardless of how perfect, would long remain in full force and effect unless the people were trained in knowledge and qualities of virtuous character to make it operate successfully.

Samuel Adams expressed the universal feelings of the Founders when he said: "But neither the wisest constitution nor the wisest laws will secure the liberty and happiness of a people whose manners are universally corrupt. He therefore is the truest friend of the liberty of his country who tries most to promote its virtue, and who, so far as his power and influence extend, will not suffer a man to be chosen into any office of power and trust who is not a wise and virtuous man."[41]

When Alexis de Tocqueville came to the United States in 1831, he observed how much the perpetuation of the American political system depended upon the training of the youth in the schools. He returned to France and wrote his famous two-volume work, *Democracy in America*, in which he said:

"It cannot be doubted that in the United States the instruction of the people powerfully contributes to the support of the democratic republic; and such must always be the case, I believe, where the instruction which enlightens the understanding is not separated from the moral education."[42]

He interviewed Americans at every level of society and wrote: "If you question [an American] respecting his own country . . . he will inform you what his rights are and by what means he exercises them. . . . You will find that he is familiar with the mechanism of the laws. . . . The American learns to know the laws by participating in the act of legislation. . . . The great work of society is ever going on before his eyes, and, as it were, under his hands. In the United States, politics are the end and aim of education."[43]

De Tocqueville was particularly astonished by the knowledge that children possessed concerning the Constitution and how the American system operated. Many of the children were studying a little book of questions and answers called *The Catechism on the Constitution*. It was written by Arthur J. Stansbury and was published in 1828.

The Founders had much to say about liberty and how easily it can be lost. In the following quotations, they address themselves to six questions:

• *Shouldn't we trust our leaders implicitly when we have chosen good men to govern us?*

Power Corrupts Even Good Men

Henry: "Show me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men, without a consequent loss of liberty! I say that the loss of that dearest privilege has ever followed, with absolute certainty, every such mad attempt."[44]

• *Why is it dangerous to grant more power to rulers than is absolutely necessary?*

Beware the Iron Glove of Tyranny

Goudy: "Its [government's] intent is a concession of power on the part of the people to their rulers. We know that private interest governs mankind generally. Power belongs originally to the people, but if rulers be not well guarded, that power may be usurped from them. People ought to be cautious about giving away power.... If we give away more power than we ought, we put ourselves in the situation of a man who puts on an iron glove, which he can never take off till he breaks his arm. Let us beware of the iron glove of tyranny."[45]

• *When is suspicion of our leaders a virtue?*

Be Jealous of Those in Power for the Sake of Unborn Generations

Goudy: "I am jealous and suspicious of the liberties of mankind.... Suspicions in small communities, are a pest to mankind, but in a matter of this magnitude, which concerns the interest of millions yet unborn, suspicion is a very noble virtue."[46]

When Suspicion Is Justified

Henry: "Suspicion is a virtue as long as its object is the preservation of the public good, and as long as it stays within proper bounds....

"Guard with jealous attention the public liberty. Suspect every one who approaches that jewel. Unfortunately, nothing will preserve it but downright force. Whenever you give up that force, you are inevitably ruined."[47]

• *When are our rights most in danger?*

Rights Most Endangered in Times of Complacency

Hamilton: "It is a truth, which the experience of ages has attested, that the people are always most in danger when the means of injuring their rights are in the possession of those of whom they entertain the least suspicion."[48]

• *Why can't rulers be satisfied with the power which is given them?*

Never Forget the Universal Frailty of Human Nature

G. Livingston: "Of what kind of beings, Sir, is the general government to be composed? If of men, I think it probable, at least, they may be corrupt. Indeed, if it were not for the depravity of human nature, we should stand in no need of human government at all."[49]

Iredell: "No power, of any kind or degree, can be given but what may be abused; we have, therefore, only to consider whether any particular power is absolutely necessary. If it be, the power must be given, and we must

run the risk of the abuse, considering our risk of this evil as one of the conditions of the imperfect state of human nature, where there is no good without the mixture of some evil. At the same time, it is undoubtedly our duty to guard against abuses as much as possible."[50]

Human Propensity Is to Expand Power

Mason: "From the nature of man, we may be sure that those who have power in their hands will not give it up while they can retain it. On the contrary, we know that they will always, when they can, rather increase it."[51]

- *What can the people do if the rulers are abusing their power?*

The People Have the Right to Regain Control Whenever Necessary

Iredell: "The only real security of liberty, in any country, is the jealousy and circumspection of the people themselves. Let them be watchful over their rulers. Should they find a combination against their liberties, and all other methods appear insufficient to preserve them, they have, thank God, an ultimate remedy. That power which created the government can destroy it. Should the government, on trial, be found to want amendments, those amendments can be made in a regular method, in a mode prescribed by the Constitution itself.... We have [this] security, in addition to the natural watchfulness of the people, which I hope will never be found wanting."[52]

---

1. Bergh, 7:322.
2. Quoted in Bowen, *Miracle at Philadelphia*, p. 279.
3. *Federalist Papers*, No. 14.
4. Bergh, 3:227.
5. Ford, 10:190.
6. Bergh, 15:278.
7. Ibid., 2:207.
8. Ibid., 15:483.
9. Ibid., 11:33.
10. Ibid., 6:342.
11. Ibid., 14:384.
12. Ford, 10:152.
13. Elliot, 4:16.
14. Ibid., 2:6.
15. Madison, p. 308.
16. See the opening chapters of George Bancroft, *History of the Formation of the Constitution* (New York: D. Appleton and Co., 1882).
17. *Federalist Papers*, No. 23.
18. Ibid., No. 4.
19. Ibid., No. 7.
20. Ibid., No. 8.
21. Ibid., No. 14.
22. Ibid., No. 41.
23. Madison, p. 187.
24. Bergh, 17:445.
25. Madison, p. 64.
26. Bergh, 15:76.
27. Ford, 10:32.
28. Ibid., 4:126.
29. Bergh, 3:321.
30. Ford, 8:264.
31. Bergh, 2:230.
32. Article IV, section 4.
33. Ibid.
34. *Federalist Papers*, No. 45.
35. Elliot, 3:301.
36. *Pennsylvania*, pp. 264–65.
37. Smyth, *The Writings of Benjamin Franklin*, 2:352.
38. Fitzpatrick, *The Writings of George Washington*, 30:491.
39. Ibid., 31:402.
40. *Federalist Papers*, No. 24.
41. Wells, *The Life and Public Services of Samuel Adams*, 1:22.
42. Tocqueville, *Democracy in America*, 1:329–30.
43. Ibid.
44. Elliot, 3:59.
45. Ibid., 4:10.
46. Ibid., p. 93.
47. Ibid., 3:45.
48. *Federalist Papers*, No. 25.
49. Elliot, 2:389.
50. Ibid., 4:50.
51. Madison, p. 232.
52. Elliot, 4:130.

The Capitol Building, home of the Congress of the United States.

PART TWO

ARTICLE I— THE LEGISLATIVE BRANCH

We the People

of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I

CHAPTER

THE POWER PLANT OF THE CONSTITUTION

The Founders considered the power to make laws to be the most significant part of the governmental machinery. It was for this reason that the Congress was made the central power plant for the entire system. Not only were the House and the Senate given the exclusive power to make the laws for the United States, but they were also given the responsibility of monitoring the entire system and initiating new laws wherever needed.

There was no intention, however, to make Congress a supreme power unto itself. The Founders carefully hedged it up with various checks and balances so that the people would not be subject to the uninhibited tyranny which they had been forced to endure under the British Parliament.

We will now make a careful examination of the lawmaking process as originally designed by the Founding Fathers.

PROVISION

8

From Article I.1.1
(means Article I, section 1, paragraph 1)

All legislative or lawmaking powers granted by this Constitution shall be vested exclusively in the Congress of the United States.

This provision gives every American the right NOT to be subject to any federal law unless it has been reviewed and approved by a majority of the people's representatives.

As originally conceived, the American lawmaking procedure was just about as foolproof as the Founders could make it. Their legacy to future generations included a series of highly significant guidelines for Congress. Because a number of these have been seriously eroded, it might be well to briefly review their suggestions.

Federal Laws Should Be Few in Number

Madison wrote: "The powers delegated by the proposed constitution to the federal government are few and defined."[1]

Jefferson followed this policy when he was President. On one occasion he wrote: "The path we have to pursue is so quiet that *we have nothing scarcely to propose* [to Congress]. A noiseless course, not meddling with the affairs of others, unattractive of notice, is a mark that society is going on in happiness."[2]

Imagine Congress convening in Washington and the President telling them that he doesn't know of a single new law needed to make the system run more smoothly. The Founders appear to have subscribed to the motto: "If it works, don't fix it." Unfortunately, today many governmental agencies feel that they must continually propose a long agenda of new laws in order to give some reason to justify their existence.

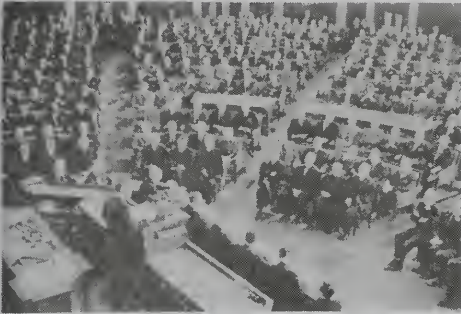
Each Law Should Be Written in Simple, Non-Technical Language

Jefferson: "Laws are made for men of ordinary understanding, and should therefore be construed by the ordinary rules of common sense. Their meaning is not to be sought for in metaphysical subtleties which make anything mean everything or nothing, at pleasure."[3]

Jefferson roasted the British Parliament for writing acts that were "tautologous, involved, and parenthetical jargon." He called their statutes "barbarous, uncouth, and unintelligible."[4]

The House to Scrutinize Proposed Laws as the Representatives of the People

Oliver Wolcott of Connecticut stated: "The Representatives are to be elected by the people at large. They will therefore be the guardians of the rights of the great body of the citizens. So well guarded is this Constitution throughout, that it seems impossible that the rights either of the states or of the people should be destroyed."[5]



According to the Constitution, all federal lawmaking authority was given to Congress.

The Senate to Scrutinize New Laws as the Representatives of the States

As Charles C. Pinckney of South Carolina said: "The Senate will be elected by the state legislatures, and represent the states in their political capacity; and thus each branch [the House and the Senate] will form a proper and independent check on the other, and the legislative power will be advantageously balanced." (Unfortunately, this balance was lost with the passage of the Seventeenth Amendment in 1913.)[6]

The President Scrutinizes New Laws from a National Viewpoint

James Wilson of Pennsylvania said: "He will, under this Constitution, be placed in office as the President of the whole Union, and will be chosen in such a manner that he may be justly styled the *man of the people.* Being elected by the different parts of the United States, he will consider himself as not particularly interested for any one of them, but will watch over the whole with paternal care and affection.... I consider it as a very important advantage, that such a man must have every law presented to him, before it can become binding on the United States."[7]

The Courts Must Scrutinize New Laws in Terms of the Constitution

If the validity of a law is challenged, then it is to be scrutinized by the federal courts to make certain that it conforms with the requirements of the Constitution.

Alexander Hamilton summarized the view of the Founders:

"The courts were designed to be an intermediate body between the people and the legislature in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body."[8]

With so much good advice concerning the lawmaking process, it was no doubt expected that the proper procedure would remain strictly within its prescribed limits, particularly in view of the statement in Article I, section 1, that ALL lawmaking authority would be vested exclusively in the Congress. However, that is not what happened.

Shattering the Jurisdictional Chains of the Constitution

The Constitution was designed to make the states sovereign in their realm of responsibility and the federal government sovereign in its realm. The big question was whether or not they might encroach on each other. It is interesting that almost from the earliest years of the nation's existence as a republic, the three branches of the federal government strained at the chains of the Constitution in their endeavor to invade the territory

of state jurisdiction. Sometimes this occurred through gradual usurpation as the Congress passed laws which preempted state functions. At other times it has been a question of the executive branch using a modest enabling act of Congress to absorb a massive amount of administrative authority over the states. Finally, there has been the tendency of the courts to favor this federal encroachment on the states by all three branches of government.

Therefore, in spite of the clear and precise declaration in Article I, section 1, that Congress shall have the exclusive power to make ALL federal laws, and that those laws would pertain ONLY to the powers enumerated in the Constitution, here is what happened:

Message from Modern Washington Planners: "If you don't, we will."

Perhaps it was inevitable that Washington would develop a paternalistic attitude toward the states. No doubt that is why the structure of the Constitution was designed to keep them separated. Nevertheless, a neat little gimmick was conjured up by federal planners which targeted the states with various programs and attached a message: "If you don't, we will." Thus, if federal monitors perceived a problem among the states which was not being handled to their satisfaction, there was an open declaration that if the states did not take care of the matter, the federal government—even though it had no Constitutional authority to do so—would feel compelled to take action.

All kinds of federal money began to be appropriated with federal regulations to go with it, because the states were not complying with "federal standards." Before long the states could say to Washington what the Declaration of Independence had said to George III: "He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance."

These programs included everything from safety belts and speed limits to land reform, environmental programs, reapportionment of state legislatures, city beautification, central city planning, safety and health regulations, physical facilities for education, hospitalization, day-care centers, nursing homes, local charities, unemployment, job training, and so forth.

The singular part about all of this is the fact that these welfare programs and social goals were for the most part wholesome and desirable, but the Founders had said a federal delivery system for these purposes would be wrong. In fact, it turned out to be the most expensive delivery system in the world. It has been operating from the wrong level of government. Once in place, however, it became a gigantic task for anyone to return it to its proper level.

Temptation of the Executive Branch to "Write Laws"

The expansion of the executive branch into the lawmaking business has developed gradually. Ever since the Interstate Commerce Commission was developed in 1887, various governmental agencies have been issuing edicts known as "administrative law" which are enforceable in the courts just as much as the laws of Congress. The Congress has also passed broad enabling acts and delegated to the executive branch the power to issue "executive orders" which are enforced as "laws" even though they are never officially approved by Congress, but are simply published in the *Federal Register*. Today more laws are imposed on the American people by these unconstitution-

al and irregular means than are passed by Congress.

The idea of the President issuing executive orders as enforceable laws has gone through several stages:

The Constitutional Stage. In the beginning, the President or his cabinet officers issued executive orders to their departments. These were simply administrative orders and affected only the administrators and agencies of the government. In other words, they did not affect the public as the laws of Congress do. Gradually, however, these executive orders began to increase in number and scope of influence. They began to affect the general public and not just the internal operations of government. Executive orders thus passed from the constitutional stage to the "strong President" stage.

The "Strong President" Stage. The transition to this new stage is indicated by the number of executive orders issued by the various Presidents. For example, President Cleveland issued only 71 executive orders, McKinley issued merely 51. However, when President Theodore Roosevelt came into office, he issued 1,006!

From this point on, each President looked upon executive orders as a tool to demonstrate the power of the President to take "independent action." President "Teddy" Roosevelt held to the view that he could do anything not specifically prohibited by the Constitution. He missed the Founders' doctrine of enumerated powers, which said he could do NOTHING except that which the Constitution authorized. As he proceeded to follow his own interpretation of his constitutional powers, Theodore Roosevelt broadcast executive orders in every direction. He greatly expanded the authority of the presidential office and wrote:

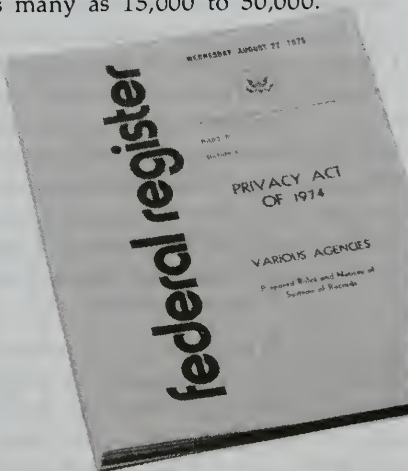
Theodore Roosevelt ignored the Founders' doctrine of enumerated powers; taking strong control of the government, he issued more than a thousand executive orders.

"I decline to adopt the view that what was imperatively necessary for the Nation could not be done by the President unless he could find some specific authorization to do it. My belief was that it was not only his right but his duty to do ANYTHING that the needs of the Nation demanded unless such action was forbidden by the Constitution or by Law. Under this interpretation of Executive power I did and caused to be done many things not previously done by the President and the heads of the Departments. I did not usurp powers, but I did greatly broaden the use of Executive power."[9]

The World War I Stage. Under the exigencies of the First World War, President Woodrow Wilson used the war powers to impose administrative law and executive orders on almost every phase of American life. For example, the Food Administration, the Grain Corporation, the War

Trade Board, and the Committee on Public Information were all set up by executive orders without being specifically or individually authorized by Congress. On the basis of "implied authority," the President used his broad warpowers to range across the entire economic and industrial horizon of America. The strict interpretation of Article I, Section 1, has never been the same since.

The New Deal Stage. This covered both the Depression era and the World War II years. Between them, the use of executive orders became so broad that legislative powers emanating from the President and the executive branch became a permanent part of the life-style of America. These executive orders became so numerous that in 1935 Congress passed the Federal Register Act, which required the publication of all executive orders in the *Federal Register* and their subsequent filing with the U.S. Archives. The State Department previously had custody of these orders and began numbering all available orders in 1907. However, it is estimated that the unnumbered orders lying in government files may be as many as 15,000 to 50,000.



Executive orders became so numerous that in 1935 Congress passed a law requiring their publication in the Federal Register.

To gain some idea of the quantity of orders being poured out on the public as well as on government agencies, the official count by January 1985 had reached 12,498! Executive orders usually cite some authority for their issuance, but many of these would be totally irrational to the founders of the nation.

In the early 1930s the Congress became nervous about delegating so much of its lawmaking power to the executive branch, and so it began monitoring the various agencies to make certain they were issuing executive orders in harmony with the original intent of Congress. However, in 1984 the Supreme Court declared that it was a violation of the separation-of-powers doctrine to have the Congress monitoring the administration of the executive branch. Amazingly, the court did not say that it was a violation of the separation-of-powers doctrine to have the Congress delegating its lawmaking powers to the executive branch in the first place.

Making Secret Executive Agreements

It was never contemplated by the Founders that the heads of nations would sit in a huddle and reach secret agreements other than *temporary* wartime strategies among allies. To prevent the negotiation of secret agreements, the Founders required that all treaties with foreign powers must be submitted to the Senate for approval. During World War II the State Department began negotiating numerous secret arrangements as part of the allied war strategy, and this established a precedent for the so-called executive agreements which were accepted as commitments among the heads of state but were never presented to the Senate for ratification as treaties.

A typical example of an executive agreement was the Yalta Agreement which was worked out between President Roosevelt, Winston Churchill, and Joseph Stalin in 1945. A statement was issued on February 11, 1945, but it soon became apparent that other commitments were made which were never presented to the Senate and were beyond the strategic agreements authorized by the War Powers Act. Under severe pressure the State Department finally released the conference papers in March 1955, but held back certain "sensitive" material. To this day neither the Senate nor the American public is completely aware of all the commitments made to the Soviet Union at Yalta.

The Earl Warren court was disturbingly involved in "judicial activism."

Temptation of the Judiciary to "Write Laws"

When the courts get into the lawmaking process, it is excused under the convenient euphemism called "judicial activism." This occurs in two phases. One is "judicial legislation," which is usurpation of authority from the legislative branch, and the other is "judicial administration," which is usurpation of authority from the executive branch. This is often done under the aegis of necessity because the federal courts complain there are social needs which are not being met by the states or the Congress and therefore the courts feel compelled to take action. This kind of reasoning would have shocked the Founders, but it has been employed repeatedly by the Supreme Court on the ground that the judiciary is merely carrying out "established public policy." This is a dangerous crutch to sustain judicial activism, since slavery was once "established public policy." Policies are set by Congress, not the courts. The court's arena relates to "laws" and "rights," not policies.

The increase in judicial activism has been creeping upward for years, but it leaped into a full gallop during the administration of Chief Justice Earl Warren. The court not only began handing down decisions in terms of "social necessity" and "established public policy," but it began reversing previous Supreme Court decisions by the bushel basket. It also became heavily involved in administrative duties, including the administration of state school systems, state prisons, and state employment policies.

Even earlier, the court unlawfully laid the foundation for what turned out to be an amendment to the Constitution in the 1936 Butler case, where "*general* welfare" was twisted to allow *special* welfare, and the federal budget jumped from six billion to six *hundred* billion in one generation.

The Warren court then went on to wipe out the right of the states to deal with subversion and internal security, declaring —without any action by Congress whatever—that the federal government intended to preempt this authority. It reduced to virtual extinction the states' residence requirements for voters, made the states

elect their state senators on the basis of population instead of senatorial districts, imposed federal standards of procedure on local police, sustained executive orders imposing federal standards of air, water, speed, safety, and health on the states, and otherwise made serious invasions into the sovereign and exclusive domain of the states. As with the executive branch, much of the judicial activism was with good intentions and high moral aspirations. But the delivery system was wrong, the administrative system was wrong, and the results were corrosive and corruptive to the constitutional system.

This accelerated usurpation of unconstitutional authority by the courts was anticipated by Thomas Jefferson. He saw hints of it even in his own day. He saw it as a gravitational force pulling power away from the states and concentrating it in Washington. He wrote in 1821 the following:

"It has long, however, been my opinion ...that the germ of dissolution of our federal government is in the constitution of the federal judiciary...working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief over the field of jurisdiction, until all shall be usurped from the States, and the government of all be consolidated into one. To this I am opposed; because when all government shall be drawn to Washington as the center of all power, it will render powerless the checks provided...and will become as venal and oppressive as the government [of George III] from which we separated."[10]

Two Safety Nets

The Founders provided two devices as safety nets to protect the people from such unconstitutional irregularities—either by Congress or by the courts.

The first safety net was to give the state legislatures, in Article V of the Constitution, power to reverse decisions of either the Congress or the courts by calling for a convention to amend the Constitution. It was set up so that neither the Congress nor the courts could prevent it. As Alexander Hamilton stated:

"In the fifth article of the plan [as provided in the Constitution], the Congress will be *obliged* on the application of the legislatures of two-thirds of the states to call a convention for proposing amendments which *shall be valid,* to all intents and purposes, as part of the constitution, when ratified by the legislatures of three-fourths of the states, or by conventions in three-fourths thereof."

Hamilton then continues: "The words of this article are peremptory [mandatory]. The Congress '*shall* call a convention.' Nothing in this particular [provision] is left to the discretion of that body.... We may safely rely on the disposition of the state legislatures to erect barriers against the encroachments of the national authority."[11]

The second safety net was the common-law jury which existed in all its powers until 1895, when the Supreme Court robbed it of half its strength. (See Sparf case under Principle 183.) The original American jury, exercising full common-law authority, had the power to pass judgment on the law as well as find the facts. Under this arrangement, if the members of the jury felt a particular law was unjust or unconstitutional, they could bring in a verdict of "not guilty" no matter what the Congress or the courts had said.

The Founders considered this to be the people's ultimate defense or weapon of last resort against abusive government. Here is how one of the Founders, Theophilus Parsons, chief justice of the Su-

The Supreme Court in the 1890s was very favorable to big business. Puck *magazine satirized what the court would look like if it were run by the common people.*

preme Court of Massachusetts explained it:

"The people themselves have it in their power effectually to resist usurpation without being driven to an appeal to arms. An act of usurpation is not obligatory; it is not law; and any man may be justified in his resistance. Let him be considered as a criminal by the general government, yet only his own fellow citizens can convict him; they are his jury, and if they pronounce him innocent, not all the powers of Congress can hurt him; and innocent they certainly will pronounce him, if the supposed law he resisted was an act of usurpation."[12]

As mentioned above, in 1895 the Supreme Court withdrew from the American juries the right to pass on the law. This was made the exclusive prerogative of the courts. Of course, the court had always been allowed to interpret the law for the jury and tell the jurors how the law should be applied in a particular case. However, this interpretation by the court was merely an *advisory* opinion, and the jury was told that it could decide for itself—even ignore the court's interpretation—if it so desired.

Since 1895 the jury has been bound to accept the law as set forth in the judge's instructions. By this means the judge can often manipulate the jury as it reaches its decision, which might be quite different if the jury were passing on the law as well as the facts.

Applying the Remedy

The first safety net—the power of the state legislatures to call a convention and reverse the Congress and the courts—must become operational. As of 1985 it has never been used. This device could then be employed to restore the powers of the common-law jury. After that a carefully structured "New Bill of Rights" could be submitted to a constitutional convention, which would restore the original genius of a divided, balanced, and limited government as envisioned by the Founders.

The most important aspect of the problem is popular inertia—assuming that the system is inflexible and cannot be changed. We must have a generation of Americans who believe in the Founders' original success formula and who have the ingenuity and grit to restore it as the Founders initially planned it.

Now let us proceed to the next principle.

PROVISION 9

From Article I.1.1

The Congress shall consist of two separate legislative bodies—one to be called a Senate and the other to be called a House of Representatives.

This provision gives the American people the RIGHT not to be subject to any federal law unless it has been approved by *both* houses of Congress.

In the Articles of Confederation there was a provision for a House of Representatives with delegates from each of the states, but there was no provision for an upper house or senate.

Nevertheless, as the years passed by, most of the states had installed an upper house in their legislatures, and it was felt best that the national government should also have a senate.

At the Constitutional Convention a raging debate erupted over the best method of representation in these two houses. In a historic compromise it was decided to have the population represented in the lower house and each state EQUALLY represented in the upper house or Senate. Senators were therefore to be appointed by their state legislators to represent the state and see that its rights and interests were protected.

Unfortunately, this role was changed in 1913 when the Seventeenth Amendment was adopted. This amendment provided that Senators must be elected by the popular vote of the people just like Congressmen. Senators therefore now represent the people of the state "at large," but there is no one in Washington specifically appointed to watch over state rights and state sovereignty. A serious deterioration in state rights and state sovereignty has occurred since the Seventeenth Amendment was adopted at the insistence of the states themselves.

The genius of the original formula may be best appreciated when it is realized that the Founders invented something political scientists had been seeking to accomplish for centuries—the combining of "the one, the few, and the many." Perhaps it is worth repeating the highlights of this "mixed" form of government which the Seventeenth Amendment altered. Here is the background.

Classical political philosophers found great merit in a one-man monarchy in time of war or a great emergency. They also found that the wealthy families who constituted the aristocracy (meaning the few) constituted a safeguard against the reckless ambitions of the monarch or the "soak the rich" demands of the people which would destroy the property and productive or industrial base of the nation. On the other hand, they noticed that the monarch and the aristocracy had a tendency to ignore the needs of the common people so that they often suffered so shamefully that the masses felt compelled to overthrow the whole political system by violence and revolution.

Polybius, Locke, and Montesquieu all advocated inventing a system which would combine all three of these groups so that the advantage of "the one" could be exercised in administering the law and taking over in wartime; "the few" could

participate as the guardians of property, wealth, and the "established order" of things; and "the many" could be represented in a house of representatives so that the will and approval of the people as a whole would be considered before laws were passed or taxes assessed.

The American Founders set out to achieve this for the first time in modern history. The *one* turned out to be the President, the *few* turned out to be the Senate, and the *many* turned out to be the House of Representatives. This arrangement was adopted by the federal government and nearly all of the states. Only Nebraska set up a unicameral legislature (a house of representatives without a senate).

The Founders explained why the federal Constitution provided for both a house of representatives and a Senate similar to the pattern already adopted by several of the states. Here are some of the questions answered by the Founders during the discussion of Principle 9:

- *What are the purpose and the structural characteristics of a sound "upper chamber" such as the Senate?*

Importance of a Senate as Well as a House of Representatives

Hamilton: "There are few positions more demonstrable than that there should be, in every republic, some permanent body to correct the prejudices, check the intemperate passions, and regulate the fluctuations, of a popular assembly. It is evident that a body instituted for these purposes must be so formed as to exclude, as much as possible, from its own character, those infirmities, and that mutability, which it is designed to remedy. It is, therefore, necessary that it should be small, that it should hold its authority during a considerable period, and that it should have such an independence in the exercise of its powers, as will divest it, as much as possible, of local prejudices. It should be so formed as to be the centre of political knowledge, to pursue always a steady line of conduct, and to reduce every irregular propensity to system. Without this establishment, we may make experiments without end, but shall never have an efficient government.

"It is an unquestionable truth, that the body of the people, in every country, desire sincerely its prosperity; but it is equally unquestionable, that they do not possess the discernment and stability necessary for systematic government. To deny that they are frequently led into the grossest errors by misinformation and passion, would be a flattery which their own good sense must despise. That branch of administration, especially, which involves our political relation with foreign states, a community will ever be incompetent to [perform]....

"From these principles it follows that there ought to be two distinct bodies in our government — one which shall be immediately constituted by and peculiarly represent the people, and possess all the popular features; another formed upon the principle and for the purposes before explained. Such considerations as these induced the Convention who formed your state Constitution to institute a Senate upon the present plan. The history of ancient and modern republics had taught them that many of the evils which these republics suffered arose from the want of a certain balance and mutual control indispensable to a wise administration; they were convinced that popular assemblies were frequently misguided by ignorance, by sudden impulses, and the intrigues of ambitious men, and that some

firm barrier against these operations was necessary: they, therefore, instituted your Senate, and the benefits we have experienced have fully justified their conceptions."[13]

Bicameral Legislature Provides Double Security

Iredell: "The legislative body should be divided into two branches, in order that the people might have a double security. It will often happen that, in a single body, a bare majority will carry exceptionable and pernicious measures. The violent faction of a party may often form such a majority in a single body, and by that means the particular views or interests of a part of the community may be consulted, and those of the rest neglected or injured.... If a measure be right, which has been approved of by one branch, the other will probably confirm it; if it be wrong, it is fortunate that there is another branch to oppose or amend it."[14]

• *As originally designed, whom did the Senate represent?*

Senate Represented the States

Iredell: "The people will be represented in one house, the state legislatures in the other."[15]

C. C. Pinckney: "In the general Constitution, the House of Representatives will be elected immediately by the people, and represent them and their personal rights individually; the Senate will be elected by the state legislatures, and represent the states in their political capacity; and thus each branch will form a proper and independent check on the other, and the legislative powers will be advantageously balanced."[16]

Wolcott: "The Constitution effectually secures the states in their several rights. It must secure them for its own sake; for they are the pillars which uphold the general systems. The Senate, a constituent branch of the general legislature, without whose assent no public act can be made, are appointed by the states, and will secure the rights of the several states. The other branch of the legislature, the Representatives, are to be elected by the people at large. They will therefore be the guardians of the rights of the great body of the citizens. So well guarded is this Constitution throughout, that it seems impossible that the rights either of the states or of the people should be destroyed."[17]

• *Why was the Senate designed to slow down the legislative process?*

Hasty Legislation Is Dangerous

Hamilton: "In the legislature, promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarring of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection, and serve to check excesses in the majority."[18]

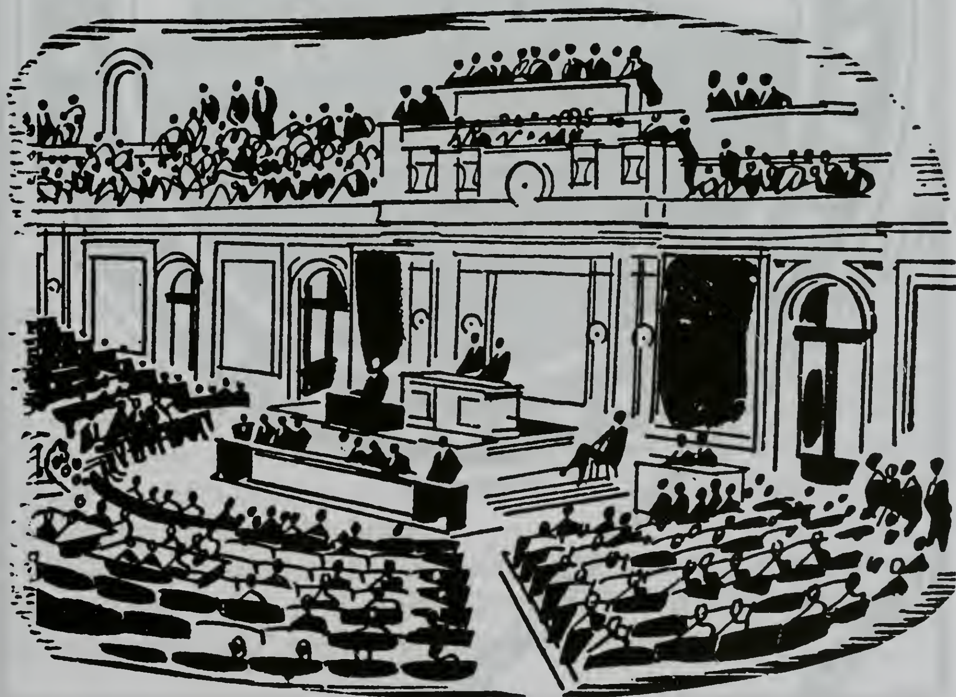
• *Why was the structure of the legislative branch called a "miracle"?*

Constitution Either a Miracle or Genius

Mason: "He believed the mind of the people of America ... was well settled — first, in an attachment to republican government; secondly, in an attachment to more than one branch in the legislature. Their constitutions accord so generally in both these circumstances that they seem almost to have been preconcerted. This must either have been a miracle or have resulted from the genius of the people."[19]

1. *Federalist Papers,* No. 45.
2. Bergh, 10:342; emphasis added.
3. Ibid., 15:450.
4. Ibid., 16:114.
5. Elliot, 2:202.
6. Ibid., 4:304.
7. Ibid., 2:447–48.
8. *Federalist Papers,* No. 78.
9. 12 Federal Bar Journal 113.
10. Bergh, 15:331.
11. *Federalist Papers,* No. 85.
12. Elliot, 2:93–94.
13. Ibid., p. 301.
14. Ibid., 4:38.
15. Ibid.
16. Ibid., p. 304.
17. Ibid., 2:202.
18. *Federalist Papers,* No. 70.
19. Madison, p. 135.

According to the Constitution, Congress is to be the source of all federal laws.



HOUSE
OF
REPRESENTATIVES
UNITED STATES

CHAPTER

THE HOUSE OF REPRESENTATIVES

There is no greater evidence of the confidence which the Founders had in the American people than the power which they allocated to the people's representatives in the lower house of Congress.

At that time (1787) there was no government on earth which had a popular assembly elected by the masses of the people. Even the House of Commons in England was not truly representative of all the people. In a sense it could be said that even in the United States the right to vote was restricted somewhat, since it did not include women. However, at that time the men were supposed to be voting for the interests of their entire families, not just themselves. Separate voting rights came later.

We will now examine the Founding Fathers' constitutional provisions for the House of Representatives, which has become one of the most powerful legislative chambers in history.

PROVISION

10

From Article I.2.1

The members of the House of Representatives shall be elected by qualified voters in each of the states.

This provision is what gives the American people the RIGHT to vote for their own representatives, thereby making the United States a *democratic* republic.

It is customary to refer to the American system of government as a democracy, but it is more than that. A democracy involves mass participation of the people in passing laws and operating the decision-making processes of government. In a republic, on the other hand, the people's *representatives* pass the laws and operate the government.

The Founders wrote into the Constitution the democratic principle of mass participation of qualified voters in electing their representatives, but then they turned to the principle of a republic to have these representatives pass the laws and administer the government.

This double function makes the United States system a democratic republic. At one time Thomas Jefferson's party was referred to as the Democratic Republican party.

The Founders thoroughly understood the fatal weaknesses of a pure democracy and warned against the masses attempting to manage all public business.

The word *democracy* is a combination of two Greek words—*demos*, the people, and *kratia*, the government. Mass participation in government can work with a small group such as a family, but it has never worked with a state or a nation. Athens tried it under Pericles, and while the freedom it provided gave Athens her famous "golden age" of around forty years' duration, the political system was totally self-defeating. Here are the reasons:

1. Voting was restricted to those who were financially independent on the assumption that they would be free from daily employment and have time to concentrate on city business.
2. The majority of them became bored with the tedious task of meeting continually (6,000 were required to pass a law and 201 to 2,001 were required for a jury).
3. Because of neglect, the government soon fell into the hands of a few bureaucrats who operated the affairs of the people to their own advantage and eventually became known as the "Thirty Tyrants."
4. The power of the voting majority soon resulted in their discovery that they could "soak the rich." This rapidly destroyed the investment capital and industry of the city which provided jobs for the common people. To survive, the rich conspired with Sparta and overthrew the whole system.
5. The cumbersome machinery for decision making by so many of the electorate was disastrous in time of any great emergency such as a war. It was just a question of time until the system was doomed.

Two hundred years ago, a noted historian, Alexander Tyler, explained why a pure democracy tends to destroy itself:

"A democracy cannot exist as a permanent form of government. It can only exist until [a majority of] the voters discover they can vote themselves largesse [gifts] from the public treasury. From that moment on the majority always votes for the candidate promising the most benefits from the public treasury, with the result that a democracy always collapses over loose fiscal policy [taxing and spending], always followed by a dictatorship. The average life of the world's greatest civilizations has been two hundred years."[1]

The American Founders were determined to build into their system the freedom of a government "of the people" but avoid the pitfalls of a pure democracy. It was sufficient to have mass participation in the election of representatives, but after that they wanted the principles of a republic to prevail.

The Republican Form of Government

Ancient Israel, Rome, and the Anglo-Saxons all survived for several hundred years under the principles of a "republic."

As we pointed out a moment ago, an ideal republic consists of combining "one" to administer the law with the representatives of the "few" in a senate to protect the territory, wealth, established order and to maintain continuity, and then combining these with the representatives of the "many" in a general assembly to protect the interests of the people.

This formula strongly appealed to the Founders.

We remind ourselves that historically there are three kinds of republics:

1. The "unitary" republic is one in which all power is vested in the central government. Great Britain is a unitary republic with all power centered in the Parliament.
2. A "confederation of states" republic is one which grants very little power to the central government but reserves nearly all power in the local political units or the states. This is what happened under the American Articles of Confederation, which almost caused the states to lose the Revolutionary War. During the American Civil War, the Southern states also tried to use a "confederacy."
3. A people's "constitutional" republic is sometimes called a "federal" republic or "democratic" republic. This system is based on the supreme will of the people, which is expressed in a written constitution. It was invented by the American Founding Fathers. This American system divides power vertically and horizontally and assigns to each level of government those responsibilities which can be most efficiently and economically administered there. It proved to be the soundest system of government ever devised by man.

In discussing these issues, the Founders answered the following questions:

- *Will the reduction of people to equality under a pure democracy assure them of economic and social equality?*

The Weakness of Democracy

Madison: "Democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would at the

same time be perfectly equalized and assimilated in their possessions, their opinions, and their passions."[2]

• *What are the advantages of a republic?*

Wise Representatives Can Benefit Public More Than the Public Can Benefit Itself

Madison: "Refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests of the people."[3]

• *What is the first principle of a republic?*

In a Republic, Majority Rule Is the First Principle

Jefferson: "The first principle of republicanism is that the *lex majoris partis* is the fundamental law of every society of individuals of equal right; to consider the will of the society announced by the majority of a single vote as sacred as if unanimous is the first of all lessons of importance, yet the last which is thoroughly learned. This law once disregarded, no other remains but that of force, which ends necessarily in military despotism."[4]

• *What is the best way to provide equal rights?*

A Republic Is the Only Means of Securing Equal Rights

Jefferson: "Modern times have the signal advantage . . . of having discovered the only device by which [man's equal] rights can be secured, to wit: government by the people, acting not in person but by representatives chosen by themselves, that is to say, by every man of ripe years and sane mind who either contributes by his purse or person to the support of his country."[5]

Every Citizen—a Voice and a Vote

Jefferson: "At the birth of our republic . . . the abuses of monarchy had so much filled all the space of political contemplation that we imagined everything republican which was not monarchy. We had not yet penetrated to the mother principle, that "governments are republican only in proportion as they embody the will of their people, and execute it." Hence, our first constitutions had really no leading principles in them. But experience and reflection have but more and more confirmed me in the particular importance of . . . equal representation. . . .

"A government is republican in proportion as every member composing it has his equal voice in the direction of its concerns, not indeed in person, which would be impracticable beyond the limits of a city or small township, but by representatives chosen by himself and responsible to him at short periods; and let us bring to the test of this canon every branch of our [Virginia] constitution. . . .

"The true foundation of republican government is the equal right of every citizen in his person and property, and in their management. Try by this, as a tally,

every provision of our constitution and see if it hangs directly on the will of the people. Reduce your legislature to a convenient number for full but orderly discussion. Let every man who fights or pays [taxes] exercise his just and equal right in their election. Submit them to approbation or rejection at short intervals. Let the executive be chosen in the same way, and for the same term, by those whose agent he is to be."[6]

• *Can the principles of a republic be extended indefinitely?*

Jefferson: "It is hoped that by a due poise and partition of powers between the [federal and state] governments we have found the secret of extending the benign blessings of republicanism over still greater tracts of country than we possess, and that a subdivision may be avoided for ages, if not forever."[7]

PROVISION

11

From Article I.2.1

Any citizen of a state who is qualified to vote for a representative in the state legislature shall be considered qualified to vote for a Representative in the United States Congress.

This provision gives every citizen who is qualified to vote for a representative in the lower chamber of the state legislature the RIGHT to vote for a congressional candidate to represent him in Washington.

This was a major concession to the states to allow them to decide who could vote in a federal election. What if a state allowed women to vote? What if a state allowed eighteen-year-olds to vote? Or slaves? This was a risk the members of the Convention were willing to take. Each state would decide who could vote. Eventually four amendments to the Constitution settled all three of these questions.

1. The Thirteenth Amendment abolished slavery.
2. The Fifteen Amendment prohibited the states from denying any citizen the right to vote because of "race, color, or previous condition of servitude."
3. The Nineteenth Amendment prohibited the states from denying a person the right to vote because of sex.
4. The Twenty-sixth Amendment reduced the voting age of citizens to 18.

During the debates, the Founders answered the following questions:

• *What is the best method of providing democratic, "classless" elections?*

Universal Suffrage

Madison: "Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States. They are to be the same who exer-

cise the right in every State of electing the corresponding branch of the legislature of the State."[8]

• *Should voters be required to own property?*

Why This Requirement Was Abandoned

Mason: "A freehold is the qualification in England, and hence it is imagined to be the only proper one. The true idea, in his opinion, was that every man having evidence of attachment to, and permanent common interest with, the society, ought to share in all its rights and privileges. Was this qualification restrained to freeholders? Does no other kind of property but land evidence a common interest in the proprietor? Does nothing besides property mark a permanent attachment? Ought the merchant, the monied man, the parent of a number of children whose fortunes are to be pursued in his own country, to be viewed as suspicious characters, and unworthy to be trusted with the common rights of their fellow citizens?"[9]

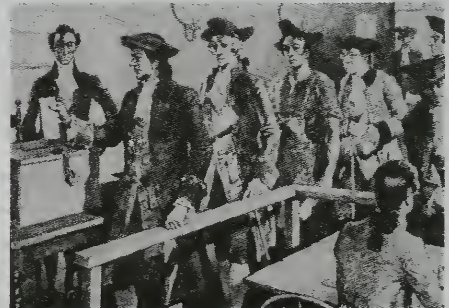
Disfranchisement Unjust

Franklin: "It is of great consequence that we should not depress the virtue and public spirit of our common people; of which they displayed a great deal during the war, and which contributed principally to the favorable issue of it. He related the honorable refusal of the American seamen, who were carried in great numbers into the British prisons during the war, to redeem themselves from misery, or to seek their fortunes, by entering on board the ships of the enemies to their country; contrasting their patriotism with a contemporary instance, in which the British seamen made prisoners by the Americans readily entered on the ships of the latter, on being promised a share of the prizes that might be made out of their own country. This proceeded, he said, from the different manner in which the common people were treated in America and Great Britain. He did not think that the elected had any right, in any case, to narrow the privileges of the electors. He quoted as arbitrary the British statute setting forth the danger of tumultuous meetings, and, under that pretext, narrowing the right of suffrage to persons having freeholds of a certain value; observing that this statute was soon followed by another, under the succeeding parliament, subjecting the people who had no votes to peculiar labors and hardships.... The sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description."[10]

• *Why would property requirements create enemies?*

Property Requirements for Voters Would Divide the People

Rutledge: "The idea of restraining the right of suffrage to the freeholders ... would create division among the people, and make enemies of all those who should be excluded."[11]



The Founders carefully discussed the right of voting.

PROVISION

12

From Article I.2.1

Elections for the members of the House of Representatives shall take place every two years.

This provision gives Americans the RIGHT to replace or confirm those who represent them every two years. However, there is no limit to the number of terms a Representative may serve.

Originally, several of the states, especially Massachusetts, had a penchant for *annual* elections. Their slogan was, "Where annual elections end, tyranny begins." However, experience soon demonstrated that delegates to a national Congress need training and experience to function effectively. Nevertheless, the Founders did not want to follow the pattern of the early parliaments in England, where the members of the House of Commons remained in office until a political crisis occurred and the majority party could not get a vote of confidence, thereby requiring a new election. The Americans wanted their representatives to return home and face the voters at regular intervals.

The fact that the representatives were to be chosen "by the people" of the several states created a "national" Congress of the people instead of a Congress representing the federated states (as was the case under the Articles of Confederation). The people thereby acquired a *dual* citizenship, being citizens of a "national" government and also citizens of their respective states (to which they likewise elected representatives).

Here are the major questions which arose during the debates.

- *What should be the duration of a term of office for Congressmen?*

Length of Term

Ames: "The term of election must be so long, that the representative may understand the interest of the people, and yet so limited, that his fidelity may be secured by a dependence upon their approbation."[12]

A term of two years appeared to meet those requirements.

- *What is the relationship between power and the duration of an office?*

The Greater the Power, the Shorter the Term of Office

Madison: "As it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the branch of it under consideration should have an immediate dependence on, and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured.... Biennial elections, under the federal system, cannot possibly be dangerous to the requisite dependence of the House of Representatives on their constituents.... It is a received and well-founded maxim that where no other circumstances affect the case, the greater the power is, the shorter ought to be its duration; and, conversely, the smaller the power, the more safely may its duration be protracted."[13]

- *Why did the Founders give up their popular slogan of "elections every year"?*

Takes One Year to Learn Duties

Madison: "No man can be a competent legislator who does not add to an upright intention and a sound judgment a certain degree of knowledge of the subjects on which he is to legislate. A part of this knowledge may be acquired by means of information which lie within the compass of men in private as well as public stations. Another part can only be attained, or at least thoroughly attained, by actual experience in the station which requires the use of it. The period of service ought, therefore, in all such cases, to bear some proportion to the extent of practical knowledge requisite to the due performance of the service."[14]

PROVISION

13

From Article I.2.2

In order to be a member of the House of Representatives, a person must have reached twenty-five years of age by the time he is sworn into office.

This provision gave Americans the RIGHT not to have any person sitting in the United States Congress unless that person was at least twenty-five years of age.

This qualification as to age was chosen arbitrarily and accepted without any significant debate. However, George Mason of Virginia did argue that twenty-one would be too young for the responsibilities of a Congressman. The Convention notes reflect the following:

Would Twenty-one Be Too Young for Congress?

Mason: "He would, if interrogated, be obliged to declare that his political opinions at the age of twenty-one were too crude and erroneous to merit an influence on public measures. It had been said that Congress had proved a good school for our young men. It might be so, for anything he knew; but if it were, he chose that they should bear the expense of their own education."[15]

Apparently the Congress, which was made up largely of younger men, felt that twenty-five was entirely adequate, and so they left the age requirement at this level.

The Founders knew it was important that they define who could or could not run for federal office.

PROVISION

14

From Article I.2.2

A member of the House of Representatives must have been a citizen of the United States for at least seven years.

This provision gave Americans the RIGHT not to have any person sitting in the Congress of the United States unless that person had been a citizen for at least seven years.

The Committee on Detail which served at the Constitutional Convention recommended on August 6, 1787, that a Representative should be a citizen for at least *three* years. However, as this provision was discussed it was agreed that an immigrant should be exposed to American institutions and American values a little longer before being allowed to make decisions for the people in Congress. They therefore changed this requirement to seven years.

George Mason pointed out the danger of allowing new immigrants to sit in Congress. The Convention notes contain the following:

Importance of Seven-Year Citizenship Requirement

Mason: "Was for opening a wide door for emigrants; but did not choose to let foreigners and adventurers make laws for us and govern us. Citizenship for three years was not enough for ensuring that local knowledge which ought to be possessed by the representative. This was the principal ground of his objection to so short a term. It might also happen that a rich foreign nation, for example Great Britain, might send over her tools, who might bribe their way into the legislature for insidious purposes."[16]

PROVISION

15

From Article I.2.2

A person cannot be elected to the House of Representatives unless he is an inhabitant of that state which he will be representing.

This provision gave Americans the RIGHT not to have any person sitting in Congress representing a state unless he is an inhabitant of that state.

The Founders did not want to follow the British parliamentary policy of allowing a person to represent a district without living there. For example, Winston Churchill resided at his country estate but represented a district of London in which he had no residence.

When Robert Kennedy of Massachu-

setts wanted to run for office in New York he had to become an "inhabitant" of New York before he could qualify.

The text for this provision was first presented using the word *resident* instead of *inhabitant*. This resulted in the following action:

Sherman: "Moved to strike out the word *resident* and insert *inhabitant*, as less liable to misconstruction."

Madison: "Seconded the motion. Both were vague, but the latter least so in common acceptation, and would not exclude persons absent occasionally for a considerable time on public or private business."[17]

In 1842 States Divided into Congressional Districts

It is interesting that in the beginning the Representatives from each state were elected "at large." In other words, if a state had eleven representatives a person would vote for eleven people on the ballot. This meant that the most popular party got ALL of the representatives even though some areas may have been opposed to that party. In 1842 Congress required the state legislatures to divide their states into congressional districts so that each region of the state would be more adequately and fairly represented.

George Mason anticipated this need during the Constitutional Convention. Here are two of his statements:

Every Region and Level of Society Should Be Represented

Mason: "Argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the government. It was, so to speak, to be our House of Commons. It ought to know and sympathize with every part of the community; and ought therefore to be taken not only from different parts of the whole republic, but also from different *districts* of the larger members of it; which had in several instances, particularly in Virginia, different interests and views arising from difference of produce, of habits, etc. We ought to attend to the rights of every class of the people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity and policy; considering that, however affluent their circumstances or elevated their situations might be, the course of a few years not only might but certainly would distribute their posterity throughout the lowest classes of society. Every selfish motive, therefore, every family attachment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest, than of the highest, order of citizens."[18]

A Congressman Should Be in Harmony with His Constituents

Mason: "The people will be represented; they ought therefore to choose the representatives. The requisites in actual representation are that the representatives should sympathize with their constituents; should think as they think, and feel as they feel; and that for these purposes should even be residents among them."[19]

Four new members of the House of Representatives are sworn in as a new session begins.

PROVISION

16

From Article I.2.3

The number of Representatives from each state will be apportioned according to population.

This provision gave each citizen the RIGHT to be represented in Congress in proportion to (or at the same ratio as) all of the other people of the country.

This is the provision which almost wrecked the Constitutional Convention. The smaller states wanted each state to have a single vote no matter what the population of a state might be. The larger states felt this was unfair. Virginia argued that this gave a citizen from Georgia sixteen times more representation than a citizen from Virginia. The smaller states argued back that if representation were based on population, a citizen of Virginia would have sixteen times more representation than a citizen of Georgia.

It was finally settled when the Constitution provided equal representation of all of the states (whether large or small) in the Senate, but gave each state apportioned representation in the House according to population.

Since this was the linchpin which saved the Constitution, the Founders had to address numerous questions. Some of them were as follows:

- *What did Roger Sherman of Connecticut propose as a compromise?*

The Connecticut Compromise Offered by Roger Sherman

Sherman: "He would agree to have two branches, and a proportional representation in one of them; provided each state had an equal voice in the other. This was necessary to secure the rights of the lesser states; otherwise three or four of the large states would rule the others as they please. Each state like each individual had its peculiar habits, usages, and manners, which constituted its happiness. It would not therefore give to others a power over this happiness, any more than an individual would do, when he could avoid it."[20]

- *Why did the small states object so strenuously to proportional representation?*

Complaint of Small States

Brearley: "It had been much agitated in Congress at the time of forming the Confederation, and was then rightly settled by allowing to each sovereign state an equal vote. Otherwise, the smaller states must have been destroyed instead of being saved. The substitution of a ratio, he admitted, carried fairness on the face of it; but on a deeper examination was unfair and unjust. Judging of the disparity of the states by the quota of Congress, *Virginia* would have *sixteen votes* and *Georgia* but one. A like proportion to the others will make the whole number ninety. There will be three large states and ten small ones. The large states, by which he meant Massachusetts, Pennsylvania, and Virginia, will carry everything before them. It had been admitted, and was known to him from facts within New Jersey, that where large and small counties were united into a district for electing

representatives for the district, the large counties always carried their point, and consequently the states would do so. Virginia with her sixteen votes will be a solid column indeed, a formidable phalanx. While Georgia with her solitary vote, and the other little states, will be obliged to throw themselves constantly into the scale of some large one in order to have any weight at all."[21]

Objection to Representation Based on Contributions

Paterson: "Considered the proposition for a proportional representation as striking at the existence of the lesser states. . . . He said there was no more reason that a great individual state, contributing much, should have more votes than a small one, contributing little, than that a rich individual citizen should have more votes than an indigent one. If the rateable property of A was to that of B as forty to one, ought A for that reason to have forty times as many votes as B? Such a principle would never be admitted; and if it were admitted would put B entirely at the mercy of A. As A has more to be protected than B, so he ought to contribute more for the common protection. The same may be said of a large state, which has more to be protected than a small one. Give the large states an influence in proportion to their magnitude, and what will be the consequence? Their ambition will be proportionally increased, and the small states will have everything to fear."[22]

Small States Must Have Some Defense Against Large States

Johnson: "The controversy must be endless whilst gentlemen differ in the grounds of their arguments; those on one side considering the states as districts of people composing one political society; those on the other considering them as so many political societies. The fact is that the states do exist as political societies, and a government is to be formed for them in their political capacity, as well as for the individuals composing them. Does it not seem to follow that if the states, as such, are to exist, they must be armed with some power of self-defense?"[23]

- *What was Franklin's "Analogy of the Broad Table"?*

The Broad Table

Franklin: "The diversity of opinions turns on two points. If a proportional representation takes place, the small states contend that their liberties will be in danger. If an equality of votes is to be put in its place, the large states say their money will be in danger. When a broad table is to be made, and the edges of planks do not fit, the artist takes a little from both and makes a good joint. In like manner, here, both sides must part from some of their demands in order that they may join in some accommodating proposition."[24]

- *What would have happened without the Connecticut Compromise?*

The Founders argued that the small states must have some defense against the power of the large states.

Compromise Prevented Dissolution of the Union

Strong: "The Convention had been much divided in opinion. In order to avoid the consequences of it, an accommodation had been proposed. A committee had been appointed; and though some of the members of it were averse to an equality of votes, a report had been made in favor of it. It is agreed on all hands that Congress are nearly at an end. If no accommodation takes place, the Union itself must soon be dissolved.... He thought the small states had made a considerable concession, in the article of money bills, and that they might naturally expect some concessions on the other side."[25]

• *In what way did the Connecticut Compromise provide representation both individually and collectively?*

One Legislative Branch Elected by People, One by States

Pierce: "Was for an election by the people as to the first branch; and by the states as to the second branch; by which means the citizens of the states would be represented both *individually* and *collectively.*"[26]

PROVISION

17

From Article I.2.3

Direct taxes (levied against the property of private individuals) shall be apportioned among the states according to population.

We will discuss the interesting problem of "direct taxes" as well as "indirect taxes" when we come to Article I, section 9, paragraph 4.

This present provision gave each state the RIGHT not to have its citizens taxed any higher than the other states in proportion to its population.

The debate on this provision centered around two questions:

1. Is population the most equitable basis for assessing federal taxes against the states?
2. If population is adopted as the basis for assessing taxes, should slaves be counted?

With reference to the first question, the delegates to the Constitutional Convention decided that population was a more equitable basis for assessing direct taxes than any other.

With reference to the second question of including slaves as part of the "population," the southern states objected on the ground that the slaves had no property but were property themselves. The other states pointed out that the South wanted to include slaves as part of the population in calculating the number of representatives to which they were entitled, but now they refused to count them in assessing their proportion of taxes. It was finally compromised and an agreement reached that each slave would be given a weight of three-fifths in determining both population and taxation. This decision was not meant to be demeaning to

the slaves but was simply a compromise between population and taxation.

• *Why is population a better basis for assessing taxation than the value of the land?*

Taxing on Land Value Is Impracticable

C. Pinckney: "The value of land had been found, on full investigation, to be an impracticable rule. The contributions of revenue, including imports and exports, must be too changeable in their amount; too difficult to be adjusted; and too injurious to the non-commercial states. The number of inhabitants appeared to him the only just and practicable rule."[27]

Taxation and Representation (Based on Population) Go Together

Gerry: "All moneys to be raised for supplying the public treasury by direct taxation shall be assessed on the inhabitants of the several states according to the number of their representatives respectively in the first branch, . . . according to the general principle that taxation and representation ought to go together."[28]

Why Representation and Taxation Are Equated Together

Randolph: "Representatives and taxes go hand in hand: according to the one will the other be regulated. The number of representatives is determined by the number of inhabitants; they have nothing to do but to lay taxes accordingly. . . . At present, before the population is actually numbered, the number of representatives is sixty-five. Of this number, Virginia has a right to send ten; consequently she will have to pay ten parts out of sixty-five parts of any sum that may be necessary to be raised by Congress. This, sir, is the line. Can Congress go beyond the bounds prescribed in the Constitution? Has Congress a power to say that she shall pay fifteen parts out of sixty-five parts? Were they to assume such power, it would be usurpation so glaring, that rebellion would be the immediate consequence. Congress is only to say on what subject the tax is to be laid. It is a matter of very little consequence how it will be imposed, since it must be clearly laid on the most productive article in each particular state. . . . A collector goes to a man's house; the man pays him with freedom, or makes an apology for his inability to do it then; at a future day, if payment be not made, distress is made, and acquiesced in by the parts. . . . Were the tax laid on one uniform article through the Union, its operation would be oppressive on a considerable part of the people."[29]

• *If taxes are based on population, will the census be accurate and honest?*

Encourage States to Provide an Honest Census of Population

Madison: "In one respect, the establishment of a common measure for representation and taxation will have a very salutary effect. As the accuracy of the census to be obtained by the Congress will necessarily depend, in a considerable degree, on the disposition, if not on the co-operation of the States, it is of great importance that the States should feel as little bias as possible to swell or to reduce the amount of their numbers. Were their share of representation alone to be governed by this rule, they would have an interest in exaggerating their inhabitants. Were the rule to decide their share of taxation alone, a contrary temptation would prevail. By extending the rule to both objects, the States will have opposite inter-

ests which will control and balance each other and produce the requisite impartiality."[30]

• *Why were slaves counted as three-fifths of a vote in calculating population?*

A Compromise

King: "There has, says he, been much misconception on this section. It is a principle of this Constitution, that representation and taxation should go hand in hand. This paragraph states that the number of free persons shall be determined, by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. These persons are the slaves. By this rule is representation and taxation to be apportioned. And it was adopted, because it was the language of all America."[31]

• *Wasn't this compromise demeaning to the slaves?*

The Three-Fifths Compromise Not Demeaning to Slaves

Madison: "We must deny the fact that slaves are considered merely as property, and in no respect whatever as persons. The true state of the case is that they partake of both these qualities: being considered by our laws, in some respects, as persons, and in other respects as property. In being compelled to labor, not for himself, but for a master; in being vendible by one master to another master; and in being subject at all times to be restrained in his liberty and chastised in his body, by the capricious will of another — the slave may appear to be degraded from the human rank, and classed with those irrational animals which fall under the legal denomination of property. In being protected, on the other hand, in his life and in his limbs, against the violence of all others, even the master of his labor and his liberty; and in being punishable himself for all violence committed against others — the slave is no less evidently regarded by the law as a member of the society, not as a part of the irrational creation; as a moral person, not as a mere article of property. The federal Constitution, therefore, decides with great propriety on the case of our slaves, when it views them in the mixed character of persons and of property. This is in fact their true character. It is the character bestowed on them by the laws under which they live. If the laws were to restore the rights which have been taken away, the Negroes could no longer be refused an equal share of representation with the other inhabitants....

"It is agreed on all sides that numbers are the best scale of wealth and taxation, as they are the only proper scale of representation. Would the convention have been impartial or consistent, if they had rejected the slaves from the list of inhabitants when the shares of representation were to be calculated, and inserted them on the lists when the tariff of contributions was to be adjusted? Could it be reasonably expected that the Southern States would concur in a system which considered their slaves in some degree as men when burdens were to be imposed, but refused to consider them in the same light when advantages were to be conferred? ...

"Let the case of the slaves be considered, as it is in truth a peculiar one. Let the compromising expedient of the Constitution be mutually adopted."[32]

PROVISION

18

From Article I.2.3

A census of the population of each state shall be taken within three years after this Constitution is adopted, and every ten years thereafter.

This provision gives every American the RIGHT to be represented in Congress according to his state's proportion of population, as corrected by a new census every ten years.

The first census was conducted in 1790 and has been conducted every ten years since. Although designed originally by the Founders for the purpose of merely determining the extent of the population in each of the states, the federal census has become a major investigative device of the national government to determine a multitude of social and economic facts as well.

DISTRICTS.	Free white Males of sixteen years and upwards, including heads of families.	Free white Males under sixteen years.	Free white Females, including heads of families.	All other free persons.	Slaves.	Total.
• Vermont	22435	22328	40505	255	16	85539
New Hampſhire	36086	34851	70160	630	158	141885
{ Maine	24384	24748	46870	538	NONE	96540 }
{ Maſſachuſetts	95453	87289	190582	5463	NONE	378787 }
Rhode Iſland	16019	15799	32652	3407	948	68825
Connecticut	60523	54403	117448	2808	2764	237946
New York	83700	78122	152320	4654	21324	340120
New Jerſey	45251	41416	83287	2762	11423	184139
Pennſylvania	110788	106948	206363	6537	3737	434373
Delaware	11783	12143	22384	3899	8887	59094
Maryland	55915	51339	101395	8043	103036	319728
{ Virginia	110936	116135	215046	12866	292627	747610 }
{ Kentucky	15154	17057	28922	114	12430	73677 }
North Carolina	69988	77506	140710	4975	100572	393751
South Carolina	—	—	—	—	—	—
Georgia	13103	14044	25739	398	29264	82548
	Free white Males of twenty-one years and upwards, including heads of families.	Free Males under twenty one years of age.	Free white Females, including heads of families.	All other Perſons	Slaves.	Total.
S. Weſtern territory	6271	10277	15365	361	3417	35691
N. Ditto	—	—	—	—	—	—

As required by the Constitution, the first census was taken in 1790; a new census has been taken every ten years thereafter.

From the time of ancient Rome the census takers have gathered extensive information concerning property and the economic circumstances of each person enumerated on the rolls. This same tendency has evolved in the United States until the Census Bureau has become a major source of statistical data. This has not developed without considerable resistance from the states as well as individual citizens, but it has been implied by the Supreme Court that this procedure lies within the inherent power of the national government in order for it to obtain information needed for intelligent legislative action. Nevertheless, with each census there is a growing outcry of alarm concerning the increased invasion of privacy.

Because of the provision in the Constitution that any "direct" taxes (against a person or his property) must be apportioned according to the population of a state, the census was of great importance in this respect. As we shall see later, the Sixteenth Amendment altered this provision.

PROVISION

19

From Article I.2.3

To avoid having too many members in the House of Representatives, each Congressman must represent at least 30,000 people.

This provision was designed to give the people the RIGHT to have a Congress small enough to manage the lawmaking process.

All history has demonstrated that large assemblies are boisterous, confusing, and inefficient. If we had one Congressman for every 30,000 Americans today, our House of Representatives would have 10,000 members--and every one of them wanting to give a speech!

Fortunately, the 30,000 figure was the minimum, not the maximum, so the Congress made no attempt to keep this ratio as the population increased. All they did was to try to maintain a proportionate representation. However, by 1921 each Congressman represented an average of 211,877 people, and an effort was made to enlarge the membership of the House. However, it was already becoming unwieldly so the resolution was defeated. In 1929 a bill was passed which provided that no matter how much the population of the country increased, the number of Congressmen could never exceed 435 members. A resident Commissioner representing Puerto Rico and four delegates representing the District of Columbia, the Virgin Islands, Guam, and American Samoa are treated as regular Congressmen (i.e., they serve on committees and debate), but they cannot vote (2 U.S.C. 2, 2a, 2b). Today, each Congressman represents approximately 690,000 people.

Questions raised during the discussion of this topic included the following:

• *Did the Founders realize that as the population grew they would have to change the ratio of population each Congressman would represent?*

Anticipating the Time When a New Ratio Must Be Established

Hamilton: "One representative for every thirty thousand inhabitants is fixed as the standard of increase; till, by the natural course of population, it shall become necessary to limit the ratio."[33]

• *Did they realize the possibility of the Congress becoming an unwieldly mob if the ratio was not changed?*

A Limitation Is Indispensable

Harrison: "According to the *ratio* established in the Constitution, as the number of the inhabitants in the United States increases, the number of representatives would also increase to a great degree, and in a century would become an unwieldy mob. It is therefore expedient and necessary that the Constitution should be so framed as to leave to the general legislature a discretionary power to limit the representation by forming a new ratio. These considerations have left no doubt in my mind of the propriety of the article under debate. I am clear that it contemplates an increase, till the extensive popu-

lation of the country shall render a limitation indispensable."[34]

• *Where is the balance between "too small" and "too big"?*

When Bigness Is Not Beautiful

Madison: "Nothing can be more fallacious than to found our political calculations on arithmetical principles. Sixty or seventy men may be more properly trusted with a given degree of power than six or seven. But it does not follow that six or seven hundred would be proportionably a better depository. And if we carry on the supposition to six or seven thousand, the whole reasoning ought to be reversed. The truth is that in all cases a certain number at least seems to be necessary to secure the benefits of free consultation and discussion, and to guard against too easy a combination for improper purposes; as, on the other hand, the number ought at most to be kept within a certain limit, in order to avoid the confusion and intemperance of a multitude. In all very numerous assemblies, of whatever characters composed, passion never fails to wrest the scepter from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob."[35]

PROVISION 20

From Article I.2.3

Each state shall be entitled to have at least one Representative even if it is disproportionate to the rest of the states.

This provision gives the small states the RIGHT to be represented in Congress by one delegate even if their population is not sufficient to be proportionate to the representatives of the other states.

This means that if a state has a population of less than 500,000 (which is what the average Congressman represents today), that state will still have one Representative in the House. As of 1984 the states having only one Congressman were:

Alaska	Vermont
Delaware	Washington
North Dakota	Wyoming
South Dakota	

Every state has at least one member of the House of Representatives, regardless of population.

PROVISION 21

From Article I.2.3

As a temporary expedient until the first census is taken, each state is entitled to a specified number of Representatives.

This was simply an interim arrangement to give each state a voice and a vote until the official census determined the precise representation for each state.

State	Representatives
New Hampshire	3
Massachusetts	8
Rhode Island	1
Connecticut	5
New York	6
New Jersey	4
Pennsylvania	8
Delaware	1
Maryland	6
Virginia	10
North Carolina	5
South Carolina	5
Georgia	3

PROVISION 22

From Article I.2.4

If the seat of a Representative becomes vacant because of death, resignation, or some other cause, the governor of that state shall call for a new election to fill the vacancy.

This provision assigns a RIGHT to the states to fill a vacancy in the House of Representatives at the earliest possible date.

It is interesting that the Founders felt that a vacancy in the House of Representatives could wait until a special election had been called, whereas a vacancy in the Senate was considered so detrimental to that smaller body of the legislature that the governor is authorized to appoint an interim Senator to fill the office until the next election if he so desires. (See Article I, section 3, paragraph 2.)

PROVISION

23

From Article I.2.5

The House of Representatives shall choose its own Speaker to preside over its proceedings.

This provision is part of the RIGHT granted to the House of Representatives to manage its own affairs.

Referring to the presiding officer as the "Speaker" of the House is a carryover from the British Parliament, where the members elected someone to speak to the king in their behalf. He therefore became known as the "Speaker of the House" and presided over the Parliament while it was in session.

In the United States the Speaker is always elected by the majority party and wields a significant role in giving priority to his party's program. In Great Britain the Speaker is non-partisan (more or less) and may function through successive administrations.

Once a Speaker is chosen, he holds that office as long as he remains a member of the House of Representatives and his party remains in the majority. This explains why Sam Rayburn of Texas, who was devoted to the philosophy of President Franklin D. Roosevelt, remained in office for a record period of seventeen years.

The political power of the Speaker includes the following:

1. He supervises the daily business of the House.
2. He decides which member will be recognized to speak.
3. He appoints the members to the special conference committees.
4. He can vacate the chair in order to debate on an issue or cast a vote.
5. He follows the Vice President in line of succession to be President.

"Uncle Joe" Cannon, the dictatorial Speaker of the House in the early part of the twentieth century, in the House barbershop.

PROVISION 24

From Article I.2.5

The House of Representatives shall choose its own clerks, sergeant at arms, and all other officers needed to function efficiently.

Once again, this provision is designed to give the House of Representatives the RIGHT to manage its own affairs with its own personnel. As a matter of practical politics, much of this right is inherited by the majority party.

Important offices of the House include the following:

1. **Committee Chairmen,** who supervise much of the legislative process. They decide where their committees will meet, which bills will be considered, and in what manner they will be treated. The attitude of a committee chairman is a major factor in determining whether a bill assigned to his committee will be defeated or passed into law. Committee chairmen are chosen by the majority party in a private meeting called a party caucus. The choice is nearly always made on the basis of seniority, which has been the cause of widespread criticism.
2. **Floor Leaders** are chosen in a closed caucus by each of the parties. Their assignment is to keep their party moving on legislative action and keep the members of the party unified and informed.
3. **Party Whips** are also chosen by each party in a closed caucus. They monitor the progress of legislation before the House and try to make certain that all members of their respective parties vote and follow the suggestions of party leaders wherever possible.
4. **The Clerk of the House** has a wide range of duties. He receives the credentials of each member, records all votes, certifies the passage of all legislation, receives all official communications during periods of adjournment or recess, and at the beginning of a new term of Congress presides over the House until a Speaker is officially elected.
5. **The Sergeant at Arms** enforces House rules and maintains proper order and procedures. He also has charge of the mace, which is the symbol of legislative power and authority. When the House is called to order, the mace is placed on the podium at the Speaker's right. It is removed when the daily session is adjourned. If the mace is placed at a lower level than the Speaker's podium it signifies that the House has resolved itself into a Committee of the Whole. The sergeant at arms of the House alternates with the sergeant at arms of the Senate to serve as chairman of the Capitol Police Board and the Capitol Guide Board. He also manages the House bank, which disburses salaries and travel expenses for Congressmen.
6. **The Doorkeeper of the House** controls admission to the floor of the House, supervises the document room, and is in charge of the pages. He is also the one who delivers messages from the President and the Senate to the Speaker and escorts important dignitaries who visit the Capitol.

7. **The Postmaster of the House** handles around fifty million pieces of mail each year and supervises the mail security system which scans the mail as it comes in.
8. **The Chaplain of the House** offers the opening prayer at each session and supervises the prayer room which has been set up for House members.
9. **The House Parliamentarian** advises House officers on parliamentary rules and indicates which committees have jurisdiction over certain bills.
10. **The Pages of the House** are primarily messengers who are under the supervision of the doorkeeper. Some of them sit on the rostrum steps to carry messages for the members during the session. Others are assigned to the cloakroom, the Speaker's office, and so forth. Until 1971 only male pages were appointed. Speaker Carl Albert of Oklahoma appointed the first female House page in 1973. House pages are between 16 and 18 and are juniors or seniors in high school. They attend the Capitol Page School held in the Library of Congress and must maintain at least a C average and be of good character. They attend classes from 6:10 to 9:45 P.M. five days a week. Many pages become government officials or members of Congress themselves.

PROVISION 25

From Article I.2.5

The House of Representatives shall have the exclusive authority to bring impeachment charges against any federal judges or officials in the executive branch of government.

This provision is designed to give the people's representatives the RIGHT to bring charges against the judicial or administrative officers of government where there is evidence of misfeasance or malfeasance.

This judicial power to bring an indictment or impeachment charge against federal officials is a carryover from the powers of Parliament. In the beginning the Parliament could do little more than pass laws, which were promptly ignored or subverted by the king's officers. The next step was to refuse to raise taxes or appropriate funds for the king unless he would give the House of Commons the right to bring impeachment charges against derelict officials and have them tried before the House of Lords. If found guilty, the miscreant could be discharged from his office and the king could not pardon him. Furthermore, after dismissal the discharged official could be charged in a criminal or civil court for his violations by those whom he had injured. All of the elements of these impeachment proceedings developed by Parliament were incorporated in the constitutional powers of the United States Congress.

Historically, the threat of impeachment

has not been as effective as the Founders had hoped, mainly because it has been seldom used.

One judge was impeached and removed for drunkenness, another for disloyalty during the Civil War, and a third for conduct unbecoming a judge. A member of President Grant's cabinet was impeached by the House, but since he resigned the Senate did not convict him. President Andrew Johnson is the only President to be impeached, and he missed conviction by one vote. History has been on the side of President Johnson. The Tenure of Office Act, which required the President to have the approval of the Senate before he discharged a government official, was repealed in 1887.

President Nixon is the only President who has resigned under threat of impeachment.

When charges are preferred against an official, the matter is referred to the House Judiciary Committee or to a special House investigating committee. A report is submitted to the House, which then votes on whether or not to impeach. Articles of impeachment are prepared for presentation at the trial, which is conducted before the Senate. The view of the Founders concerning impeachment is reflected in the excerpts quoted below. Among the questions treated by the Founders we find the following:

• *Is the threat of impeachment a deterrent to crimes in high office?*

Impeachment Designed to Terrify the Miscreant

Iredell: "Vesting the power of impeachment in the House of Representatives, is one of the greatest securities for a due execution of all public officers. Every government requires it. Every man ought to be amenable for his conduct, and there are no persons so proper to complain of the public officers as the representatives of the people at large. The representatives of the people know the feelings of the people at large, and will be ready enough to make complaints.... It will be not only the means of punishing misconduct, but it will prevent misconduct. A man in public office who knows that there is no tribunal to punish him, may be ready to deviate from his duty; but if he knows there is a tribunal for that purpose, although he may be a man of no principle, the very terror of punishment will perhaps deter him."[36]

• *Should a person charged with impeachment be suspended until the proceedings have been concluded?*

Madison Objected to Suspension of Officials During Impeachment Proceedings

Rutledge and G. Morris: Moved "that persons impeached be suspended from their office until they be tried and acquitted."

Madison: "The President is made too dependent already on the legislature by the power of one branch to try him in consequence of an impeachment by the other. This intermediate suspension will put him in the power of one branch only. They can at any moment, in order to make way for the functions of another who will be more favorable to their views, vote a temporary removal of the existing magistrate."[37]

1. Quoted in Laurel Hicks et al., *American Government and Economics* (Pensacola, Fla.: Beka Book Publication, 1984), p. 37.
2. *Federalist Papers,* No. 10.
3. Ibid.
4. Ford, 10:89.
5. Bergh, 15:482.
6. Ibid., p. 32.
7. Ford, 5:369.
8. *Federalist Papers,* No. 57.
9. Madison, p. 353.
10. Ibid., p. 354.
11. Ibid.
12. Elliot, 2:8.
13. *Federalist Papers,* No. 52.
14. Ibid., No. 53.
15. Madison, p. 149.
16. Ibid., pp. 355–56.
17. Ibid., p. 356.
18. Ibid., p. 32; emphasis added.
19. Ibid., p. 63.
20. Ibid., pp. 137–38.
21. Ibid., pp. 80–81.
22. Ibid., p. 81.
23. Ibid., pp. 182–83.
24. Ibid., p. 196.
25. Ibid., pp. 255–56.
26. Ibid., p. 66.
27. Ibid., p. 215.
28. Ibid., p. 246.
29. Elliot, 3:121–22.
30. *Federalist Papers,* No. 54.
31. Elliot, 2:36.
32. *Federalist Papers,* No. 54.
33. Elliot, 2:238.
34. Ibid., p. 271.
35. *Federalist Papers,* No. 55.
36. Elliot, 4:32.
37. Madison, p. 561.

Rather than be impeached, President Richard M. Nixon chose to resign.

UNITED STATES SENATE
LIBERTY
E PLURIBUS UNUM

CHAPTER

THE SENATE

Many Americans may not realize that the political structure of the United States Senate was a unique American invention. Its original design was quite unlike that of any legislative body that had ever before existed.

Most upper chambers consist of lifetime dignitaries and frequently include hereditary offices. They also include the highest officials of the state church, if the nation has one. The upper chamber in nearly all other countries is considered to hold the representatives of wealth and the aristocratic class.

In the United States the Senate was originally designed to represent the sovereignty of each of the states. Senators were therefore to be appointed by the legislature of their respective states rather than be elected by popular vote. The voting public, of course, has a

different perspective on the welfare of the state as a whole, since they are not usually familiar with its great variety of problems.

The Seventeenth Amendment changed the selection of Senators from being appointed by their state legislatures to being elected by the people themselves.

This was hailed as a great victory for "democracy," but it missed the entire intent of the Founders. They set up the original arrangement to provide an important balance which is no longer part of the system. In many ways, the detrimental consequences of this change have already become self-evident.

PROVISION

26

From Article I.3.1

The Senate of the United States shall be composed of two Senators from each state.

This provision provided that every state, no matter how large or how small, would have the RIGHT to equal representation in the Senate of the United States.

This is the provision which prevented the Constitutional Convention from destroying itself over the issue of whether the representation in the Congress would be by states or according to population. The thinking of many of the Founders prior to the Convention was to have a Senate appointed by the House of Representatives. This was a pattern already set up in some of the states. However, when Roger Sherman saw the Convention practically destroying itself over the issue of representation, he proposed (for the third time) that the matter be settled by having the state legislatures appoint two Senators to represent each sovereign state, and that representation in the Senate would always be equal regardless of the size of the population of a state. This pacified the smaller states and is known in American history as the "great compromise" of the Convention.

It is interesting to note that there was never an extensive discussion on the number of Senators; their only concern was that the number be equal for each state.

During the Convention the Founders had a lot to say about the role of the United States Senate, which in many respects was a new political invention.

The following quotations provide answers to some of the questions which were raised during the debates:

- *What was the overruling factor which led to abandonment of democratic or proportional representation in the Senate in favor of equal representation for all states regardless of the size of their population?*

Senate Structure to Protect Small States

W. Davie: "The protection of the small states against the ambition and influence of the larger members, could only be effected by arming them with an equal power in one branch of the legislature."[1]

• *Is it sound political science to have proportional representation in one branch and equal representation in the other?*

Both the People and the States Should Be Represented

Madison: "The equality of representation in the Senate is . . . the result of compromise between the opposite pretensions of the large and small States. . . . If indeed it be right that among a people thoroughly incorporated into one nation every district ought to have a *proportional* share in the government and that among independent and sovereign States, bound together by a simple league, the parties, however unequal in size, ought to have an *equal* share in the common councils, it does not appear to be without some reason that in a compound republic, partaking both of the national and federal character, the government ought to be founded on a mixture of the principles of proportional and equal representation."[2]

• *What is the primary role of the Senate?*

Senate to Moderate the Political Disease of Excessive Lawmaking in the House

Madison: "In this spirit it may be remarked that the equal vote allowed to each State is at once a constitutional recognition of the portion of sovereignty remaining in the individual States and an instrument for preserving that residuary sovereignty. So far the equality ought to be no less acceptable to the large than to the small States; since they are not less solicitous to guard, by every possible expedient, against an improper consolidation of the States into one simple republic.

"Another advantage accruing from this ingredient in the constitution of the Senate is the additional impediment it must prove against improper acts of legislation. No law or resolution can now be passed without the concurrence, first, of a majority of the people, and then of a majority of the states. . . . As the larger States will always be able, by their power over the supplies, to defeat unreasonable exertions of this prerogative of the lesser states, and as the facility and excess of lawmaking seem to be the diseases to which our government are most liable, it is not impossible that this part of the Constitution may be more convenient in practice than it appears to many in contemplation."[3]

Senate Exempt from Passion

Randolph: "If he was to give an opinion as to the number of the second branch, he should say that it ought to be much smaller than that of the first; so small as to be exempt from the passionate proceedings to which numerous assemblies are liable. He observed that the general object was to provide a cure for the evils under which the United States labored; that in tracing these evils to their origin, every man had found it in the turbulence and follies of democracy; that some check therefore was to be sought for, against this tendency of our governments, and that a good Senate seemed most likely to answer the purpose."[4]

Senate to Cool the Heated Turbulence of the House

Madison: "The use of the Senate is to consist in its proceeding with more coolness, with more system, and with more wisdom, than the popular branch. Enlarge their number, and you communicate to them the vices which they are meant to correct. . . . It appeared to him

Because the body of the Senate is smaller than the House, each Senator wields greater power.

that their weight would be in an inverse ratio to their numbers. The example of the Roman tribunes was applicable. They lost their influence and power in proportion as their number was augmented. The reason seemed to be obvious: they were appointed to take care of the popular interests and pretensions at Rome, because the people by reason of their numbers could not act in concert and were liable to fall into factions among themselves, and to become a prey to their aristocratic adversaries. The more the representatives of the people, therefore, were multiplied, the more they partook of the infirmities of their constituents, the more liable they became to be divided among themselves, either from their own indiscretions or the artifices of the opposite faction, and of course the less capable of fulfilling their trust. When the weight of a set of men depends merely on their personal characters, the greater the number, the greater the weight. When it depends on the degree of political authority lodged in them, the smaller the number, the greater the weight."[5]

• *Should a Senator be subject to recall?*

Recall Would Corrupt the Senate

R. Livingston: "The state legislatures, being frequently subject to factious and irregular passions, may be unjustly disaffected and discontented with their delegates; and a senator may be appointed one day and recalled the next. This would be a source of endless confusion. The Senate are indeed designed to represent the state governments; but they are also the representatives of the United States, and are not to consult the interest of any one state alone, but that of the Union. This could never be done, if there was a power of recall; for sometimes it happens that small sacrifices are absolutely indispensable for the good and safety of the confederacy; but, if a senator should presume to consent to these sacrifices, he would be immediately recalled. This reasoning turns on the idea that a state, not being able to comprehend the interest of the whole, would, in all instances, adhere to her own, even to the hazard of the Union.

" . . . It would open so wide a door for faction and intrigue, and afford such scope for the arts of an evil ambition. A man might go to the Senate with an incorruptible integrity, and the strongest attachment to the interest of his state. But if he deviated, in the least degree, from the line which a prevailing *party* in a popular assembly had marked for him, he would be immediately recalled. Under these circumstances, how easy would it be for an ambitious, factious demagogue to misrepresent him, to distort the features of his character, and give a false color to his conduct! How easy for such a man to impose upon the public, and influence them to recall and disgrace their faithful delegate! The general govern-

ment may find it necessary to do many things which some states might never be willing to consent to. Suppose Congress should enter into a war to protect the fisheries, or any of the northern interests; the Southern States, loaded with their share of the burden which it would be necessary to impose, would condemn their representatives in the Senate for acquiescing in such a measure. There are a thousand things which an honest man might be obliged to do, from a conviction that it would be for the general good, which would give great dissatisfaction to his constituents....

"He believed that the power of recall would have a tendency to bind the senators too strongly to the interests of their respective states; and for that reason he objected to it. It will destroy, said he, that spirit of independence and free deliberation which ought to influence the senator. Whenever the interests of a state clash with those of the Union, it will oblige him to sacrifice the great objects of his appointment to local attachments. He will be subjected to all the caprices, the parties, the narrow views, and illiberal politics, of the state governments, and become a slave to the ambitions and factions at home.

"These observations, continued the chancellor, are obvious inferences from a principle which has been already explained—that the state legislatures will be ever more or less incapable of comprehending the interests of the Union. They cannot perceive the propriety, or feel the necessity, of certain great expedients in politics, which may seem, in their immediate operation, to injure the private interests of the members."[6]

A Senator Is Not Like a Private Agent

Hamilton: "That a man should have the power, in private life, of recalling his agent, is proper; because, in the business in which he is engaged, he has no other object but to gain the approbation of his principal. Is this the case with the Senator? Is he simply the agent of the state? No. He is an agent for the Union, and he is bound to perform services necessary to the good of the whole, though his state should condemn them."[7]

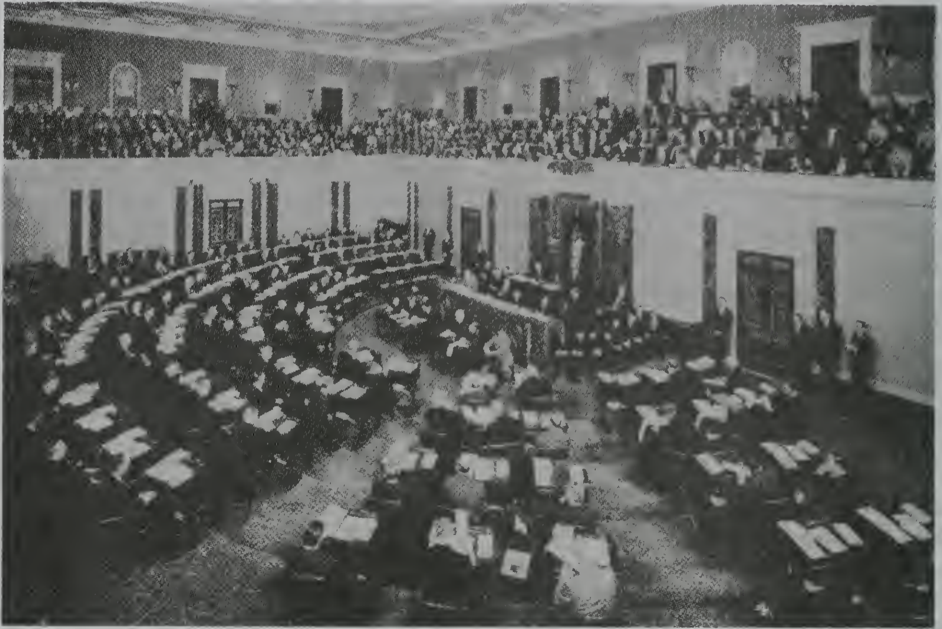
PROVISION 27

From Article I.3.1

Senators shall be appointed by their respective state legislatures to protect the rights of the states as sovereign entities.

This provision was to give each state legislature the RIGHT to choose its special representatives in the United States Senate.

Since Representatives in the House are elected by the general population of a state, they represent the individual citizens of the state. People have different anxieties and desires as individuals than they do *collectively* as a state. In fact, most individual citizens are not even aware of



The first official photograph of the Senate in session, taken in 1963.

what the state must do to protect its people and their rights. The sovereign state therefore stands on different ground than the individual sovereign citizen. This is why it was important to have the state legislature appoint two of its most experienced and popular elder statesmen to go to Washington as the guardians of the interests of the whole state. Their original purpose was to sublimate the constantly shifting demands of the individual citizens who are represented in the House. The idea was to provide balance.

Of course, as we have already pointed out, the Seventeenth Amendment shattered this entire concept of balanced power as the Founders originally designed it. That amendment outlawed the right of the state legislatures to appoint representatives in the Senate and transferred that right to the people. As a result, each of the Senators is now selected the same way the people select their Congressmen —by popular vote. This amendment changed the Senators from the collective representatives of each state into the representatives of the individuals who elected them. Furthermore, it changed the Senate from a gyroscope of political balance and a moderator of turbulence in the House into a popular assembly or second House of Representatives.

This entire situation raises many questions for the modern American. Here are some of the questions, with answers provided by the Founders:

- *What was the Founders' original conception of the Senate?*

Senate Represents the States

Wilson: "Who are Congress? It is a body that will consist of a Senate and a House

of Representatives. Who compose this Senate? Those who are elected by the *legislature* of the different states. Who are the electors of the House of Representatives? Those who are qualified to vote for the most numerous branch of the *legislature* in the separate states. Suppose the state legislatures annihilated; where is the criterion to ascertain the qualification of electors? and unless this be ascertained, they cannot be admitted to vote; if a state legislature is not elected, there can be no Senate, because the senators are to be chosen by the *legislatures only*....

"The existence of the state governments is one of the most prominent features of this system."[8]

Senate Answers to State Legislatures

W. Davie: "The senators represent the sovereignty of the states; they are directly chosen by the state legislatures, and no legislative act can be done without their concurrence."[9]

• *What was the role of each Senator as the Founders perceived it?*

The Senator's Role— to Protect States' Rights

W. Davie: "It was in the Senate that the several political interests of the states were to be preserved, and where all their powers were to be perfectly balanced."[10]

• *Since the Senators were the states' special envoys, did this give the states a veto power over the House of Representatives?*

Senate to Veto "Factious" Measures from the House

Iredell: "The manner in which our Senate is to be chosen gives us an additional security. Our senators ... are to be chosen by different legislatures in the Union.

" ...It may be sometimes necessary for the Senate to prevent factious measures taking place, which may be highly injurious to the real interests of the public, the Senate should not be at the mercy of every popular clamor."[11]

• *How does the Senate constitute a link between the national and the state governments?*

Senators Chosen as State Agents to Work on Federal Level

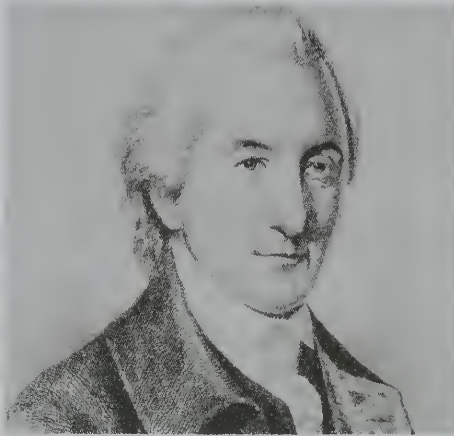
Madison: "The appointment of senators by the State legislatures ... is recommended by the double advantage of favoring a select appointment, and of giving to the State governments such an agency in the formation of the federal government as must secure the authority of the former, and may form a convenient link between the two systems."[12]

• *Why does a state legislature have a point of view different from that of the people of the state?*

Unique Perspective of a State Legislature

Wilson: "The legislatures are actuated not merely by the sentiment of the people, but have an official sentiment opposed to that of the general government, and perhaps to that of the people themselves."[13]

• *What caliber of leaders were the state legislatures expected to appoint to the Senate?*



John Dickinson

Senate to Be Composed of Mature Statesmen

Dickinson: "The sense of the states would be better collected through their governments than immediately from the people at large.... He wished the Senate to consist of the most distinguished characters, distinguished for their rank in life and their weight of property.... He thought such characters more likely to be selected by the state legislatures than in any other mode."[14]

• *What other methods of appointing Senators were considered?*

The Founders Discussed Four Ways of Choosing Senators

Gerry: "Four modes of appointing the Senate have been mentioned. First, by the first branch of the national legislature—this would create a dependence contrary to the end proposed. Secondly, by the national executive—this is a stride towards monarchy that few will think of. Thirdly, by the people; the people have two great interests, the landed interest and the commercial, including the stockholders. To draw both branches from the people will leave no security to the latter interest; the people being chiefly composed of the landed interest, and erroneously supposing that the other interests are adverse to it. Fourthly, by the individual legislatures—the elections being carried through this refinement will be most likely to provide some check in favor of the commercial interest against the landed; without which, oppression will take place, and no free government can last long where that is the case. He was therefore in favor of this last."[15]

• *What difference would it make if they were selected by popular election?*

Anticipating the Evils of the Seventeenth Amendment

Dickinson: "If the state government were excluded from all agency in the national one, and all power drawn from the people at large, the consequence would be that the national government would move in the same direction as the state governments now do, and would run into all the same mischiefs. The reform would only unite the thirteen small streams into one great current, pursuing the same course without any opposition whatever."[16]

Popular Election of Senators Not as Likely to Produce "Such Fit Men"

Sherman: "Opposed elections by the people in districts, as not likely to produce such fit men as elections by the state legislatures."[17]

Business Has Greater Confidence in Appointments by State Legislatures

Gerry: "Insisted that the commercial and monied interest would be more secure in the hands of the state legislatures than of

the people at large. The former have more sense of character, and will be restrained by that from injustice. The people are for paper money, when the legislatures are against it."[18]

• *Would the popular election of Senators diminish their independence?*

Selection by State Legislatures Increases Independence

C. Pinckney: "Thought the second branch ought to be permanent and independent; and that the members of it would be rendered more so by receiving their appointments from the state legislatures. This mode would avoid the rivalships and discontents incident to the election by districts."[19]

• *Was the Senate a safety net to defend states against federal abuse?*

Senate the Major Defense Against the Federal Government

Mason: "Whatever power may be necessary for the national government, a certain portion must necessarily be left with the states. It is impossible for one power to pervade the extreme parts of the United States so as to carry equal justice to them. The state legislatures also ought to have some means of defending themselves against the encroachments of the national government. In every other department we have studiously endeavored to provide for its self-defense. Shall we leave the states alone unprovided with the means for this purpose? And what better means can we provide than the giving them some share in, or rather to make them a constituent part of, the national establishment?"[20]

Founders Learn the Deficiencies of Large Governments

Ellsworth: "Wisdom was one of the characteristics which it was in contemplation to give the second branch—would not more of it issue from the legislatures than from an immediate election by the people? He urged the necessity of maintaining the existence and agency of the states. Without their cooperation it would be impossible to support a republican government over so great an extent of country. An army could scarcely render it practicable. The largest states are the worst governed. Virginia is obliged to acknowledge her incapacity to extend her government to Kentucky. Massachusetts cannot keep the peace one hundred miles from her capital, and is now forming an army for its support. How long Pennsylvania may be free from a like situation cannot be foreseen. If the principles and materials of our government are not adequate to the extent of these single states, how can it be imagined that they can support a single government throughout the United States? The only chance of supporting a general government lies in grafting it on those of the individual states."[21]

Senate to Prevent Congress from Becoming Independent of the States

Madison: "If the general government were wholly independent of the governments of the particular states, then, indeed, usurpation might be expected to the fullest extent."[22]

The Federal Government Must Be Kept Dependent on the States

Madison: "The senators will be appointed by the legislatures; and, though elected for six years, I do not conceive they will so soon forget the source from whence they derive their political existence. This

election of one branch of the federal by the state legislatures, secures an absolute dependence of the former [the federal] on the latter [the states]."[23]

The Senators Are State Ambassadors to Prevent Federal Encroachment

Ames: "The state governments are essential parts of the system.... The *senators* represent the *sovereignty of the states;* in the other house, individuals are represented.... They are in the quality of ambassadors of the states, and it will not be denied that some permanency in their office is necessary to a discharge of their duty. Now, if they were chosen yearly, how could they perform their trust? If they would be brought by that means more immediately under the influence of the people, then they will represent the state legislatures less, and become the representatives of individuals. This belongs to the other house. The absurdity of this, and its repugnancy to the federal principles of the Constitution, will appear more fully, by supposing that they are to be chosen by the people at large. If there is any force in the objection to this article, this would be proper. But whom, in that case, would they represent? Not the legislatures of the states, but the people. This would totally obliterate the federal features of the Constitution. What would become of the state governments, and on whom would devolve the duty of defending them against the encroachments of the federal government? A consolidation of the states would ensue, which, it is conceded, would subvert the new Constitution, and against which this very article, so much condemned, is our best security. Too much provision cannot be made against a consolidation. The state governments represent the wishes, and feelings, and local interests, of the people. They are the safeguard and ornament of the Constitution; they will protract the period of our liberties; they will afford a shelter against the abuse of power, and will be the natural avengers of our violated rights."[24]

American System Depends upon Healthy, Vigorous State Legislatures

Sumner: "Nothing is clearer than that the existence of the legislatures, in the different states, is essential to the very being of the general government."[25]

Constitutional Government Depends upon Strong State Governments

Wilson: "From the very nature of things, and from the organization of the system itself, the state governments must exist, or the general governments must fall amidst their ruins."[26]

There Should Be a Bias in Favor of State Governments

Madison: "I may say, with truth, that there never was a more economical government in any age or country, nor which will require fewer hands, or give less influence.... From the chief officers to the lowest, we shall find the scale preponderating so much in favor of the states, that, while so many persons are attached to them, it will be impossible to turn the balance against them. There will be an irresistible bias towards the state governments."[27]

Strong State Legislature Is Part of Checks and Balances

Sumner: "But some gentlemen object further, and say the delegation of these great powers will *destroy the state legislatures;* but I trust this never can take place, for the general government depends on the state legislatures for its very existence.

The President is to be chosen by electors under the regulation of the state legislature; the Senate is to be chosen by the state legislatures; and the representative body by the people, under like regulations of the legislative body in the different states."[28]

State Governments the Parent of the Federal Government

Iredell: "The very existence of the general government depends on that of the state governments. The state legislatures are to choose the senators.... The state legislatures are also to direct the manner of choosing the President.... The same observation may be made as to the House of Representatives, since, as they are to be chosen by the electors of the most numerous branch of each state legislature, if there are no state legislatures, there are no persons to choose the House of Representatives."[29]

Constitution Designed to Keep States Dominant

Hamilton: "If we compare the nature of their different powers, or the means of popular influence which each possesses, we shall find the advantage entirely on the side of the states.... The aggregate number of representatives throughout the states may be two thousand. The personal influence will, therefore, be proportionately more extensive than that of one or two hundred men in Congress. The state establishments of civil and military officers of every description, infinitely surpassing in number any possible correspondent establishments in the general government, will create such an extent and complication of attachments, as will ever secure the predilection and support of the people. Whenever, therefore, Congress shall meditate any infringement of the state constitutions, the great body of the people will naturally take part with their domestic representatives. Can the general government withstand such a united opposition? Will the people suffer themselves to be stripped of their privileges? Will they suffer their legislatures to be reduced to a shadow and name? The idea is shocking to common sense."[30]

Senate—States' Jealous Guardian Against Encroachments

Hamilton: "The State legislatures, who will always be not only vigilant but suspicious and jealous guardians of the rights of the citizens against encroachments from the federal government, will constantly have their attention awake to the conduct of the national rulers, and will be ready enough, if anything improper appears, to sound the alarm to the people, and not only to be the VOICE, but, if necessary, the ARM of their discontent."[31]

States Must Unite to Protect Their Common Liberties

Hamilton: "It may safely be received as an axiom in our political system that the State governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority. Projects of usurpation cannot be masked under pretenses so likely to escape the penetration of select bodies of men, as of the people at large. The legislatures will have better means of information. They can discover the danger at a distance; and possessing all the organs of civil power and the confidence of the people, they can at once adopt a regular plan of opposition, in which they can combine all the resources of the community. They can readily communicate with each other in the different States, and unite their common forces for the protection of their common liberty."[32]

Original Constitution Made States an Impediment to Federal Usurpation

Madison: "Should an unwarrantable measure of the federal government be unpopular in particular States ... the means of opposition to it are powerful and at hand. The disquietude of the people; their repugnance and, perhaps, refusal to cooperate with the officers of the Union; the frowns of the executive magistracy of the State; the embarrassments created by legislative devices, which would often be added on such occasions, would oppose, in any State, difficulties not to be despised; would form, in a large State, very serious impediments; and where the sentiments of several adjoining states happened to be in unison, would present obstructions which the federal government would hardly be willing to encounter."[33]

State Legislatures' Influence in the Electoral College

Hamilton: "Sir, the senators will constantly be attended with a reflection, that their future existence is absolutely in the power of the states. Will not this form a powerful check? It is a reflection which applies closely to their feelings and interests; and no candid man, who thinks deliberately, will deny that it would be alone a sufficient check. The legislatures are to provide the mode of electing the President, and must have a great influence over the electors. Indeed, they convey their influence, through a thousand channels, into the general government."[34]

• *Who is supposed to monitor the Senators to keep them in line?*

State Officials to Monitor Senators

Hamilton: "The executive and legislative bodies of each State will be so many sentinels over the persons employed in every department of the national administration; and as it will be in their power to adopt and pursue a regular and effectual system of intelligence, they can never be at a loss to know the behavior of those who represent their constituents in the national councils, and can readily communicate the same knowledge to the people. Their disposition to apprise the community of whatever may prejudice its interests from another quarter may be relied upon, if it were only from the rivalship of power."[35]

• *What did the Founders consider to be the most effective means of preventing consolidation of the executive and legislative branches?*

Strong State Governments Essential to Constitution

Wilson: "A consolidated government, that puts the thirteen United States into one...would not suit the people of America.... The system before you ... must stand or fall, as the state governments are secured or ruined."[36]

Senate to Prevent Dangerous Intrigue Between Executive and House of Representatives

Randolph: "The object of this second branch is to control the democratic branch of the national legislature. If it be not a firm body, the other branch, being more numerous, and coming immediately from the people, will overwhelm it.... No mischief can be apprehended, as the concurrence of the other branch, and in some measure of the executive, will in all cases be necessary. A firmness and independence may be the more necessary, also, in this branch, as it ought to guard the Constitution against encroachments of the

executive, who will be apt to form combinations with the demagogues of the popular branch."[37]

Senate to Prevent Consolidation of Power in Washington

Iredell: "The Senate is placed there for a very valuable purpose—as a guard against any attempt of consolidation.... There ought to be some power given to the Senate to counteract the influence of the people by their biennial representation in the other house, in order to preserve completely the sovereignty of the states."[38]

State Governments to Oppose "Madness of Tyranny" in Washington

Hamilton: "The people have an obvious and powerful protection in their state governments. Should any thing dangerous be attempted, these bodies of perpetual observation will be capable of forming and conducting plans of regular opposition. Can we suppose the people's love of liberty will not, under the incitement of their legislative leaders, be roused into resistance, and the madness of tyranny be extinguished at a blow?"[39]

PROVISION

28

From Article I.3.1

The term of office for a Senator shall be for six years.

This provision granted a RIGHT to each of the States to have the uninterrupted service of its Senators for a period of six years each.

The Virginia Resolves, which formed the agenda for the Constitutional Convention, recommended that the Senators "hold their offices for a term sufficient to insure their independency." The Virginia Resolves suggested a term of seven years, but the Founders finally settled on six. Nevertheless, the long term of office has its perils as well as its advantages. This has been especially true since the Seventeenth Amendment was passed, requiring the popular election of Senators. Some liberal Senators spend most of their term trying to radically change the whole governmental structure and then turn remarkably conservative just before an election so they can get another six-year term and continue their campaign.

The following questions and answers throw further light on the original thinking of the Founders:

- *Why should Senators have a longer term?*

The Importance of a Longer Term for Senators

Hamilton: "Sir, the main design of the convention, in forming the Senate, was to prevent fluctuations and cabals. With this view, they made that body small, and to exist for a considerable period....

"Sir, if you consider but a moment the purposes for which the *Senate* was instituted, and the nature of the business which they are to transact, you will see the necessity of giving them duration. They, together with the President, are to manage all our concerns with foreign nations;

they must understand all their interests, and their political systems. This knowledge is not soon acquired; but a very small part is gained in the closet.... They may be forming plans which required time and diligence to bring to maturity. It is necessary, therefore, that they should have a considerable and fixed duration, that they may make their calculations accordingly. If they are to be perpetually fluctuating, they can never have that responsibility which is so important in republican governments. In bodies subject to frequent changes, great political plans must be conducted by members in succession. A single assembly can have but a partial agency in them, and, consequently, cannot properly be answerable for the final event. Considering the Senate, therefore, with a view to responsibility, duration is a very interesting and essential quality. There is another view in which duration in the Senate appears necessary. A government changeable in its policy must soon lose its sense of national character, and forfeit the respect of foreigners. Senators will not be solicitous for the reputation of public measures, in which they had but a temporary concern, and will feel lightly the burden of public disapprobation, in proportion to the number of those who partake of the censure. Our political rivals will ever consider our mutable counsels as evidence of deficient wisdom, and will be little apprehensive of our arriving at any exalted station in the scale of power."[40]

The Reason for Choosing a Longer Term

R. Livingston: "It is not contended that six years are too long a time for the senators to remain in office. Indeed, this cannot be objected to, when the purposes for which this body is instituted are considered. They are to form treaties with foreign nations. This requires a comprehensive knowledge of foreign politics, and an extensive acquaintance with characters, whom, in this capacity, they have to negotiate with, together with such an intimate conception of our best interests, relative to foreign powers, as can only be derived from much experience in this business. What singular policy, to cut off the hand which has just qualified itself for action!"[41]

• *What qualities of personality are associated with the responsibilities of a Senator?*

Qualities Needed in a Senator—Stability and Knowledge

Iredell: "Foreign negotiations...will form one part of the business of the Senate.... It is necessary for us to watch the conduct of European powers, that we may be on our defence and ready in case of an attack....

"Nothing is more unfortunate for a nation than to have its affairs conducted in an irregular manner. Consistency and stability are necessary to render the laws of any society convenient for the people. If they were to be entirely conducted by men liable to be called away soon, we might be deprived, in a great measure, of their utility; their measures might be abandoned before they were fully executed, and others, of a less beneficial tendency, substituted in their stead. The public also would be deprived of that experience which adds so much weight to the greatest abilities.

"The business of a senator will require a great deal of knowledge, and more extensive information than can be acquired in a short time....

"The acquisition of full information of this kind must employ a great deal of

time; since a general knowledge of the affairs of all the states, and of the relative situation of foreign nations, would be indispensable. Responsibility, also, would be lessened by a short duration; for many useful measures require a good deal of time, and continued operations, and no man should be answerable for the ill success of a scheme which was taken out of his hands by others.

"For these reasons ... six years are not too long a duration for the Senate."[42]

A Body of Statesmen with Sound Judgment

King: "They are ... to assist the executive in the designation and appointment of officers; and they ought to have time to mature their judgments. If for a shorter period, how can they be acquainted with the rights and interests of nations, so as to form advantageous treaties?"[43]

• *In what way is a Senator guardian of wealth and the established order?*

Senate Designed to Be Guardian Against Those Demanding Redistribution of the Wealth

Madison: "In order to judge of the form to be given to this institution, it will be proper to take a view of the ends to be served by it. These were—first, to protect the people against their rulers; secondly, to protect the people against the transient impressions into which they themselves might be led. A people deliberating in a temperate moment, and with the experience of other nations before them, on the plan of government most likely to secure their happiness, would first be aware that those charged with the public happiness might betray their trust. An obvious precaution against this danger would be to divide the trust between different bodies of men, who might watch and check each other. In this they would be governed by the same prudence which has prevailed in organizing the subordinate departments of government, where all business liable to abuses is made to pass through separate hands, the one being a check on the other. It would next occur to such a people that they themselves were liable to temporary errors, through want of information as to their true interest; and that men chosen for a short term, and employed but a small portion of that in public affairs, might err from the same cause. This reflection would naturally suggest that the government be so constituted as that one of its branches might have an opportunity of acquiring a competent knowledge of the public interests. Another reflection equally becoming a people on such an occasion would be that they themselves, as well as a numerous body of representatives, were liable to err, also, from fickleness and passion. A necessary fence against this danger would be to select a portion of enlightened citizens whose limited number and firmness might seasonably interpose against impetuous counsels. It ought finally to occur to a people deliberating on a government for themselves that as different interests necessarily result from the liberty meant to be secured, the major interest might under sudden impulses, be tempted to commit injustice on the minority. In all civilized countries the people fall into different classes, having a real or supposed difference of interests. There will be creditors and debtors, farmers, merchants, and manufacturers. There will be, particularly, the distinction of rich and poor. It was true, as had been observed (by Mr. Pinckney), we had not among us those hereditary distinctions of rank which were a great source of the contests in the ancient governments, as

well as the modern states of Europe; nor those extremes of wealth or poverty, which characterize the latter. We cannot, however, be regarded, even at this time, as one homogeneous mass, in which every thing that affects a part will affect in the same manner the whole. In framing a system which we wish to last for ages, we should not lose sight of the changes which ages will produce. An increase of population will of necessity increase the proportion of those who will labor under all the hardships of life, and secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings of indigence. According to the equal laws of suffrage, the power will slide into the hands of the former. No agrarian attempts have yet been made in this country; but symptoms of a levelling spirit, as we have understood, have sufficiently appeared in a certain quarter to give notice of the future danger. How is this danger to be guarded against, on the republican principles? How is the danger, in all cases of interested coalitions to oppress the minority, to be guarded against? Among other means, by the establishment of a body, in the government, sufficiently respectable for its wisdom and virtue to aid, on such emergencies, the preponderance of justice, by throwing its weight into that scale. Such being the objects of the second branch in the proposed government, he thought a considerable duration ought to be given to it."[14]

Senate Must Be Respectable in the Eyes of Foreign Nations

Wilson: "Every nation may be regarded in two relations, first, to its own citizens; secondly, to foreign nations. It is, therefore, not only liable to anarchy and tyranny within, but has wars to avoid and treaties to obtain from abroad. The Senate will probably be the depository of the powers concerning the latter objects. It ought therefore to be made respectable in the eyes of foreign nations."[15]

PROVISION

29

There should not be any limitation on the length of service by either Senators or members of the House of Representatives.

This provision (established by the absence of any expressed limitation) gave Senators and Congressmen the RIGHT to serve as long as they desired, provided they could still be reelected.

Some of the Founders raised the question of limiting the terms of Senators and Congressmen because they feared the development of power blocs among those who had served over an extensive period of time. After careful discussion it was decided not to limit the length of service, and therefore no reference is made to it in the Constitution.

Nevertheless, as the Founders anticipated, power blocs did develop under the seniority system, and numerous attempts to reform the Congress by both parties

have failed to achieve the needed changes. This has resulted in a number of bills being written which have been designed to limit the terms of both Senators and Congressmen. Twelve years is the period often mentioned. None of this legislation has received a hearing as yet, but it demonstrates the fact that unless reforms take place in the House and the Senate, the limitation of terms in the House and the Senate could become a significant political issue.

During the debates the Founders addressed several pertinent questions, including the following:

• *Isn't it a fundamental right of the people to decide who they wish to have as their Senator or Representative?*

Requiring Rotation by Limited Terms of Office Abridges the Rights of the People

R. Livingston: "The people are the best judges who ought to represent them. To dictate and control them, to tell them whom they shall not elect, is to abridge their natural rights. This requirement of constant rotation is an absurd species of ostracism — a mode of proscribing eminent merit, and banishing from stations of trust those who have filled them with the greatest faithfulness. Besides, it takes away the strongest stimulus to public virtue — the hope of honors and rewards. The acquisition of abilities is hardly worth the trouble, unless one is to enjoy the satisfaction of employing them for the good of one's country. We all know that experience is indispensably necessary to good government. Shall we, then, drive experience into obscurity? I repeat that this is an absolute abridgment of the people's rights."[46]

• *Would not a limited term diminish the enthusiasm of an incumbent?*

Limited Terms Will Debilitate the Sense of Enthusiastic Service

Harrison: "Gentlemen . . . say that a rotation in office ought to be established; that the senators may return to the private walks of life, in order to recover their sense of dependence. I cannot agree with them in this. If the senator is conscious that his re-election depends only on the will of the people, and is not fettered by any law, he will feel an ambition to deserve well of the public. On the contrary, if he knows that no meritorious exertions of his own can procure a reappointment, he will become more unambitious, and regardless of the public opinion. The love of power, in a republican government, is ever attended by a proportionable sense of dependence. As the Constitution now stands, I see no possible danger of the senators' losing their attachment to the states; but the amendment proposed would tend to weaken this attachment, by taking away the principal incentives to public virtue. We may suppose two of the most enlightened and eminent men in the state, in whom the confidence of the legislature and the love of the people are united, engaged, at the expiration of their office, in the most important negotiations, in which their presence and agency may be indispensable. In this emergency, shall we incapacitate them? Shall we prohibit the legislature from reappointing them? It might endanger our country, and involve us in inextricable difficulties."[47]

A Limited Term Will Tempt Legislators to Lose Interest in Their Work

Hamilton: "When a man knows he must quit his station, let his merit be what it

may, he will turn his attention chiefly to his own emolument: nay, he will feel temptations, which few other situations furnish, to perpetuate his power by unconstitutional usurpations. Men will pursue their interests."[48]

• *Would not this rob the nation of some of its finest leadership in time of crisis?*

Limited Term Might Rob the Nation of Its Finest Leaders

Parsons: "There are great and insuperable objections to a [required] rotation. It is an abridgment of the rights of the people, and it may deprive them, at critical seasons, of the services of the most important characters in the nation. It deprives a man of honorable ambition, whose highest duty is the applause of his fellow-citizens, of an efficient motive to great and patriotic exertions. The people, individually, have no method of testifying their esteem but by a re-election; and shall they be deprived of the honest satisfaction of wreathing for their friend and patriot a crown of laurel more durable than monarchy can bestow?"[49]

PROVISION

30

From Article I.3.1

Each Senator shall have one vote.

This gives each Senator the RIGHT to vote independently of his fellow Senator from the same state. It also gives the people the RIGHT to know how each Senator has voted on a particular issue.

In the original Continental Congress (before the Constitution), each *state* had one vote. This made it necessary for the delegates from a particular state to take a poll to determine which way the majority wanted to cast its vote. No official record was kept of the way each individual voted, and therefore it was difficult to judge the merits of each delegate unless a person had been in attendance.

In this setting, those at the Constitutional Convention decided it would be preferable to give each Senator (or Congressman) a separate vote in order to fix responsibility for the voting record of each one.

When a Senator or a member of the House of Representatives runs for reelection, his or her "voting record" becomes an important criterion by which the voters make their decision as to whether or not the candidate will receive support.

PROVISION

31

From Article I.3.2

When the first Senate convenes, it shall be divided into three classes. The first class shall be terminated at the expiration of two years, the second class shall be terminated at the expiration of four years, and the third class shall be terminated at the expiration of six years. This means that once this order has been established, each Senator will serve for six years, but one-third of the Senate will come up for election every two years.

This provision gave the states the RIGHT to require an accounting of one-third of the Senate every two years. At the same time it gave the whole nation the RIGHT to have the protection and continuity of its most conservative body in government.

This provision meant that at least two-thirds of the Senate would be operating in perpetuity at all times.

The Founders felt there were many advantages in this arrangement:

One-Third of the Senate Up for Election Every Two Years

Iredell: "One third of the Senate is to go out every second year, and two thirds must concur in the most important cases; so that, if there be only one honest man among the two thirds that remain, added to the one third which has recently come in, this will be sufficient to prevent the rights of the people being sacrificed to any unjust ambition of that body."[50]

In a Sense, the Senate Is Restructured by the Voters Every Two Years

Parsons: "Although the senators are elected for six years, yet the Senate, as a body composed of the same men, can exist only for two years, without the consent of the states. If the states think proper, one third of that body may, at the end of every second year, be new men. When the Senate act as legislators, they are controllable at all times by the representatives; and in their executive capacity, in making treaties and conducting the national negotiations, the consent of two thirds is necessary, who must be united to a man, (which is hardly possible,) or the new men biennially sent to the Senate, if the states choose it, can control them; and at all times there will also be one third of the Senate, who, at the expiration of two years, must obtain a reelection, or return to the mass of the people. And the change of men in the Senate will be so gradual as not to destroy or disturb any national system of politics."[51]

Why It Is Healthy to Rotate Part of the Senate Every Two Years

Wilson: "The popular objection against appointing any public body for a long term was that it might, by gradual encroachments, prolong itself, first into a

body for life, and finally become a hereditary one. It would be a satisfactory answer to this objection that as one-third would go out biennially, there would be always three divisions holding their places for unequal times, and consequently acting under the influence of different views, and different impulses."[52]

PROVISION 32

From Article I.3.2

When a vacancy occurs in the Senate because of death, resignation, or some other cause, the legislature of that state shall appoint another in his stead, and if the legislature is not in session the governor of that state may make a temporary appointment until the legislature convenes.

This provision was designed to give each state the RIGHT to be equally represented in the Senate without interruption for any extended period of time.

When the Seventeenth Amendment provided for the popular election of Senators, it was also provided that the governor should call for a new election as soon as possible. In addition, it allowed the state legislature to authorize the governor to make a temporary appointment until the next election was held, if it so desired.

Randolph indicated why it was important to give governors authority to appoint Senators pending the next election, even though there is no such provision for vacancies in the House. As Madison recorded, Randolph "thought it necessary in order to prevent inconvenient chasms in the Senate. In some states the legislatures meet but once a year. As the Senate will have more power and consist of a smaller number than the other house, vacancies there will be of more consequence. The executives might be safely trusted, he thought, with the appointment for so short a time."[53]

Rebecca Latimer Felton of Georgia was appointed to fill a vacancy in the Senate at age eighty-seven. Appointed in 1922, she was the first woman to serve in the Senate.

PROVISION

33

From Article I.3.3

In order to qualify as a Senator, a person must have reached the age of 30 years by the time that person is sworn into office.

This provision gives the people the RIGHT not to have any person participating in the deliberations of the United States Senate who is not at least 30 years of age.

It is interesting that when the Rev. Thomas Hooker wrote the constitution for Connecticut in 1639, he made special note of the fact that under the laws of ancient Israel only persons with very special qualifications should be elected into office. He referred to Deuteronomy chapter 1, verse 13, which states that the people were to elect "wise men, and understanding, and known among your tribes, and I will make them rulers over you." All of these qualifications require maturity and extensive experience.

Because of a Senator's added responsibility and power of office, the Founders felt that the minimum age for a Senator should be at least five years more than a Congressman.

• *Why is maturity such an important qualification for Senators?*

The Senatorial Trust Requires Maturity

Madison: "The nature of the senatorial trust, which, requiring greater extent of information and stability of character, requires at the same time that the senator should have reached a period of life most likely to supply these advantages; and which, participating immediately in transactions with foreign nations, ought to be exercised by none who are not thoroughly weaned from the prepossessions and habits incident to foreign birth and education."[54]

More Maturity Required for the Powers of a Senator

Rutledge: "Seven years of citizenship have been required for the House of Representatives. Surely a longer time is requisite for the Senate, which will have more power."[55]

Mature Senators Needed to Guard Against Bribery and Chicanery

Williamson: "It is more necessary to guard the Senate in this case than the other house. Bribery and cabal can be more easily practiced in the choice of the Senate, which is to be made by the legislatures composed of a few men, than of the House of Representatives, who will be chosen by the people."[56]

Senator Don Nickles (R.—Oklahoma) was elected to the U.S. Senate at the age of thirty-one. He currently is the youngest member of the Senate.

PROVISION

34

From Article I.3.3

A Senator must have been a citizen of the United States for at least nine years.

This provision gave the American people the RIGHT not to have any person participating in the deliberations and lawmaking powers of the Senate who had not been a citizen of the United States for at least nine years.

Except for Franklin, as noted below, the Founders had strong opinions on this subject. The response of the Founders to the following questions indicates that careful thought had gone into their decision.

C. Pinckney: "As the Senate is to have the power of making treaties and managing our foreign affairs, there is peculiar danger and impropriety in opening its door to those who have foreign attachment."[57]

Isn't This Provision Demeaning to New Patriotic Immigrants?

Franklin: "Was not against a reasonable time, but should be very sorry to see any thing like illiberality inserted in the Constitution. The people in Europe are friendly to this country. Even in the country with which we have been lately at war, we have now, and had during the war, a great many friends, not only among the people at large but in both houses of Parliament. In every other country in Europe, all the people are our friends. We found in the course of the Revolution that many strangers served us faithfully and that many natives took part against their country. When foreigners, after looking about for some other country in which they can obtain more happiness, give a preference to ours, it is a proof of attachment which ought to excite our confidence and affection."[58]

A Response

Butler: "Was decidedly opposed to the admission of foreigners without a long residence in the country. They bring with them not only attachments to other countries, but ideas of government so distinct from ours that in every point of view they are dangerous. He acknowledged that if he himself had been called into public life within a short time after his coming to America, his foreign habits, opinions, and attachments, would have rendered him an improper agent in public affairs."[59]

The Vice President of the United States was assigned to preside over the Senate.

PROVISION

35

From Article I.3.3

A Senator must be an inhabitant of the state which he is appointed to represent.

This provision gave the people of each state the RIGHT to have their two Senators from their own state and not strangers who were unacquainted with their circumstances and desires.

As we have pointed out earlier, members of the House of Commons were able to serve in Parliament without being residents of the region they represented.

PROVISION

36

From Article I.3.4

The Vice President shall serve as the presiding officer over the Senate.

This provision gives the people the RIGHT to have someone who was elected by all of the states (and to that extent represents all of the states) preside over the body of the Senate representing individual states.

The position of the Vice President is unique in that he is the only officer of the federal government whose duties span both the legislative and executive branches. However, he does not have the power in the Senate which the Speaker has in the House:

1. He is not a member of the Senate.
2. He is not chosen to preside by the Senate.
3. He may belong to the party which is in the minority in the Senate.
4. He cannot take part in any debate.
5. He cannot vote except to break a tie.

The Founders had some interesting comments to make about this provision:

Vice President Elected to Represent All of the States

McKean: "There is a necessity of having a person to preside in the Senate, to continue a full representation of each state in that body."[60]

W. Davie: "Indecision might be dangerous and inconvenient to the public. It would then be necessary to have some person who should determine the question as impartially as possible.

" . . . From the nature of his election and office, he represents no one state in particular, but all the states."[61]

Something for Vice President to Do

Sherman: "If the Vice President were not to be president of the Senate, he would be

without employment; and some member, by being made president, must be deprived of his vote, unless when an equal division of votes might happen in the Senate, which would be but seldom."[62]

An Editorial Note

Originally, Vice Presidents were those who had run for President but did not make it. They therefore looked upon their office as a second-rate assignment. Nevertheless, should anything happen to the President, the lowly Vice President became the leader of the nation. The first Vice President was John Adams. He reflected the frustrations of his assignment when he said, "I am Vice President. In this I am nothing, but I may be everything."

The Twelfth Amendment changed the original arrangement so that today the Vice President always belongs to the same party as the President and campaigns as the President's running mate.

The Vice President has an office in the White House and attends cabinet meetings regularly. (Calvin Coolidge was the first Vice President to do so.) He is sent worldwide as a special envoy of the President and often receives assignments of a delicate nature from the President.

The office of Vice President has become vacant eighteen times—nine Vice Presidents have succeeded to the Presidency, two resigned, and seven died in office.

PROVISION

37

From Article I.3.4

The Vice President shall not be allowed to vote unless there is a tie and his vote is necessary to make a decision.

This provision gives the members of the Senate the RIGHT to conduct their affairs independent of their presiding officer, unless they are blocked by a tie vote and his opinion is necessary to reach a decision.

The Vice President is allowed to vote in the Senate only when there is a tie.

Thus far, the Vice President has cast the deciding vote in approximately 200 cases.

Because the Vice President must take over as the chief executive in case of death, removal, or incapacity of the President, it seemed appropriate to assign him to a position which, by its very nature, would tend to keep him abreast of affairs, both domestic and foreign. Until recently, however, the Vice Presidency has been looked upon as an innocuous role used primarily at election time to attract a segment of the population with which the President is not particularly popular.

PROVISION

38

From Article I.3.5

The Senate shall choose its own clerks, sergeant at arms, and all other officers needed to function effectively.

This provision gives the Senate the RIGHT to conduct its affairs independent of any other body of government.

The principal officers of the Senate include:

1. *The President pro tempore* (president for the time being) is always a leading member of the majority party. He is elected by his fellow Senators to preside when the Vice President is absent.
2. *The Committee Chairmen* play key roles in the legislative process and are chosen from the majority party by seniority.
3. *The Floor Leaders* are chosen by each party and constitute the real leaders of the Senate. They are chosen in caucus meetings to keep the members organized and in harmony with the party policies. They schedule the legislation, collect and distribute information, and promote the regular attendance of their Senators on the floor. They also maintain liaison between the Senate and the White House.
4. *The Party Whips* in the Senate serve primarily as assistants to their respective Floor Leaders.
5. *The Secretary of the Senate* keeps track of legislative bills and certifies to their passage. He also administers oaths of office and keeps the Senate Seal.
6. *The Sergeant at Arms* enforces the rules of the Senate and maintains proper decorum. In addition to supervising various parts of the Capitol as well as adjoining buildings, he rotates with the sergeant at arms of the House as chairman of the Capitol Police and Capitol Guide Board. He is protocol officer of the Senate, and announces the arrival of the President and other dignitaries.
7. *The Secretaries* to the majority and minority leaders supervise the majority and minority cloakrooms, brief Senators on votes and issues presently under consideration, poll the Senators at the request of the respective leaders, and obtain pair votes for Senators who will be absent during a vote and want to be "paired" with a member who would vote the opposite but will also be absent.
8. *The Chaplain of the Senate* opens the Senate each day with prayer. He is also available as a spiritual counselor for the members of the Senate. The Senate's most famous chaplain was Dr. Peter Marshall from Scotland, who served from 1947 to 1949. His sermons were quoted all over the country.
9. *The Parliamentarian* advises the presiding officers and members on proper parliamentary procedure.
10. *The Senate Pages* serve as messengers in the Senate. They are appointed by senior Senators only and are between the ages of 14 and 17. They attend school with the House Pages and 98 percent go on to college. They are under the supervision of the Senate sergeant at arms. The first female Pages were appointed in 1971, two years before the House appointed any.

PROVISION 39
From Article I.3.5

In case the Vice President is not available to preside over the Senate, the Senate will choose one of its own members to serve as president pro tempore.

As indicated on the previous page, this provision gave the Senate the RIGHT to elect one of their own members to preside over them so that the absence of the Vice President would not disrupt their proceedings.

However, by doing this, one of their members loses his voice and his vote in the Senate deliberations. Of course, he can vote in case of a tie just as the Vice President does.

PROVISION 40
From Article I.3.6

The Senate shall have the exclusive power to hear impeachment proceedings which the House of Representatives has brought against any judge or executive official of the government.

Impeachment proceedings give the Congress the RIGHT to remove any official from the executive and judicial branches of government.

As we have noted elsewhere, the power of impeachment was a great victory which the Parliament extracted from the British Crown. In the thirteenth century when the Parliament was in its infancy, the king agreed to have the Parliament serve as the legislative or lawmaking body of the realm, but he often frustrated Parliament by appointing administrators who were subservient to the king rather than Parliament, and often engaged in nefarious activities such as bribery, extortion, or embezzlement. Because the king was required to constantly come to the Parliament for money, its leaders finally extracted from the king the authority to bring charges against corrupt judges or administrators. The charges were made on the floor of the House of Commons and the trial was held before the House of Lords. This entire procedure was transferred over to the House of Representatives and the Senate when the United States Constitution was written.

Here are several questions which were addressed by the Founders during the convention:

- *Why is the Senate an appropriate court to try impeachments?*

Security from Periodic Changes in the Senate

Madison: "If he (the President) should seduce a part of the Senate to a participation in his crimes, those who were not seduced would pronounce sentence against him; and there is this supplementary security, that he may be convicted and punished afterwards, when other members come into the Senate, one third being excluded every second year."[63]

Why Senate Preferred over Supreme Court for Impeachment Trials

G. Morris: "Thought no other tribunal than the Senate could be trusted. The Supreme Court were too few in number, and might be warped or corrupted. He was against a dependence of the executive on the legislature, considering the legislative tyranny the great danger to be apprehended; but there could be no danger that the Senate would say untruly, on their oaths, that the President was guilty of crimes or facts, especially as in four years he can be turned out."[64]

Sherman: "Regarded the Supreme Court as improper to try the President, because the judges would be appointed by him."[65]

Senate Approves Lifetime Appointments and Should Therefore Try Those Considered Derelict

Hamilton: "The Senate as a court of impeachments ... are ... judges of the conduct of men, in whose official creation they had participated.... [This] practice... is to be seen in all the State governments, if not in all the governments with which we are acquainted: I mean that of rendering those who hold offices during pleasure dependent on the pleasure of those who appoint them."[66]

• *Why shouldn't the Vice President preside at impeachment trials?*

The Vice President Has Too Much at Stake

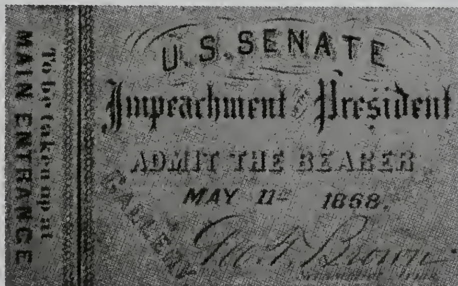
MacLaine: "The senators are on oath. This is a very happy security... when the President is tried... the chief justice shall preside in the Senate; because it might be supposed that the Vice-President might be connected, together with the President, in the same crime, and would therefore be an improper person to judge him.

" ... If the Vice-President should be judge, might he not look at the office of President, and endeavor to influence the Senate against him?"[67]

• *Is the impeachment process a meritorious procedure?*

The Impeachment Procedure Keeps the President (and Other High Officers) Under Scrutiny

Hamilton: "The President of the United States would be liable to be impeached, tried, and, upon conviction of treason, bribery, or other high crimes or misdemeanors, removed from office; and would afterwards be liable to prosecution and punishment in the ordinary course of law."[68]



Ticket to the impeachment proceedings against Andrew Johnson, 1868.

PROVISION

41

From Article I.3.6

When the Senate is sitting in its judicial capacity to try impeachment cases, all members of the Senate must be placed under oath or affirmation to perform their duty honestly and with due diligence.

This provision was designed to give the accused the RIGHT to have a hearing before a body which is required by an oath to give him a fair and honest trial.

Placing the entire Senate under oath was also designed to impress upon each of the Senators the sacred responsibility which he was obligated to assume before the nation and his Creator to render a fair and just decision.

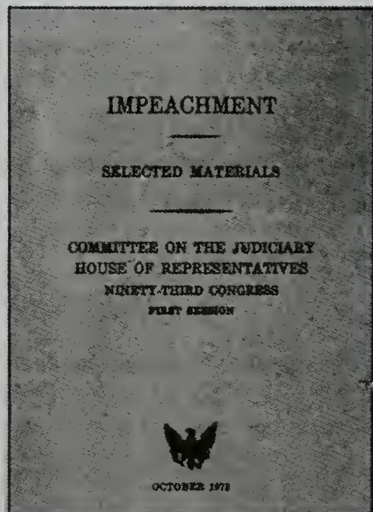
PROVISION

42

From Article I.3.6

If impeachment charges should be lodged against the President of the United States, the Chief Justice shall preside over the Senate during the impeachment hearing.

This provision gave the President the RIGHT to have his case heard by the highest judicial officer in the land, and it gave the nation the RIGHT to have the trial presided over by someone other than the President's running mate (the Vice President).


IMPEACHMENT

SELECTED MATERIALS

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-THIRD CONGRESS
FIRST SESSION

OCTOBER 1973

Records of the impeachment proceedings that were begun against Richard Nixon in 1973.

PROVISION 43

From Article I.3.6

No members of the judiciary or the executive branch of government shall be convicted of impeachment charges unless there is a concurrence by two-thirds of the members of the Senate in attendance.

This provision gives the accused the RIGHT to be substantially protected from merely partisan prejudices so that he will not stand convicted unless the decision is rendered by a substantial majority of those in attendance.

The attendance must be at least a quorum (half of the Senate plus one) in order to hold the hearing. There is a possibility of partisan imbalance in case the hearing is not well attended. However, impeachment proceedings are so rare that a substantial attendance is usually assured.

Nevertheless, numbers are important. For example there are presently 100 members of the Senate. This means it would require 51 of them to constitute a quorum and hold an impeachment hearing. Two-thirds of this number would be 34, and theoretically this number could impeach the President or any other judicial or executive officer. If all 100 Senators were present it would take 67 to convict, which is nearly twice as many.

PROVISION 44

From Article I.3.7

If any judge or executive officer is convicted of impeachment charges, the punishment of the Senate shall not extend beyond his removal from office and declaring that individual disqualified from holding any office of honor, trust, or profit under the authority of the United States in the future.

This provision gave the Senate the RIGHT to remove the convicted officer from his office and exclude him from public service in the federal government in the future; but it gave the accused the RIGHT not to suffer any bill of attainder or other punishment other than losing his position in the government.

PROVISION

45

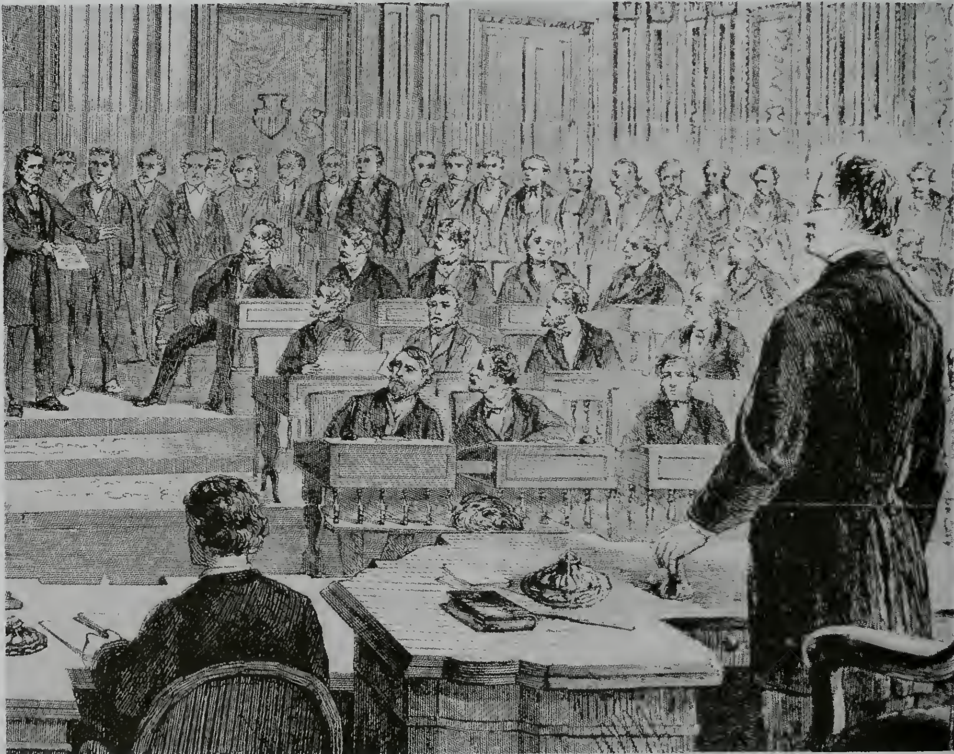
From Article I.3.7

A person removed from office by impeachment proceedings may still be charged, tried, and punished for any civil or criminal violation of the law which led to his impeachment.

This provision gives the government the RIGHT to prosecute an officer for his crimes as well as remove him from office.

This provision recognizes the fact that an impeachment is not a punishment for any crime of which the official might be accused, but merely a protective device to remove the offender from office so that he or she will have no further opportunity to use the official authority of the government for further malfeasance.

In the interest of justice, therefore, it is here provided that the offender can be criminally charged like any other citizen for the offenses which resulted in the removal from office.



The impeachment proceedings held against President Andrew Johnson were visually recorded in Frank Leslie's Illustrated. *He was impeached in 1868, but not convicted.*

1. Elliot, 4:21.
2. *Federalist Papers,* No. 62.
3. Ibid.
4. Madison, p. 34.
5. Ibid., p. 71.
6. Elliot, 2:291–92, 296.
7. Ibid., p. 320.
8. Ibid., p. 461.
9. Ibid., 4:21.
10. Ibid., p. 43.
11. Ibid., p. 40.
12. *Federalist Papers,* No. 62.
13. Madison, p. 143.
14. Ibid., p. 70.
15. Ibid., p. 71.
16. Ibid., p. 72.
17. Ibid., p. 73.
18. Ibid.
19. Ibid., p. 74.
20. Ibid.
21. Ibid., p. 163.
22. Elliot, 3:96.
23. Ibid., p. 97.
24. Ibid., 2:46.
25. Ibid., p. 64.
26. Ibid., p. 459.
27. Ibid., 3:258–59.
28. Ibid., 2:63.
29. Ibid., 4:53.
30. Ibid., 2:304.
31. *Federalist Papers,* No. 26.
32. Ibid., No. 28.
33. Ibid., No. 46.
34. Elliot, 2:318.
35. *Federalist Papers,* No. 84.
36. Elliot, 2:503.
37. Madison, p. 95.
38. Elliot, 4:133.
39. Ibid., 2:253.
40. Ibid., pp. 305–7.
41. Ibid., p. 291.
42. Ibid., 4:41.
43. Ibid., 2:47.
44. Madison, p. 167.
45. Ibid., p. 170.
46. Elliot, 2:292–93.
47. Ibid., p. 293.
48. Ibid., p. 320.
49. Ibid., p. 91.
50. Ibid., 4:42.
51. Ibid., 2:91–92.
52. Madison, p. 171.
53. Ibid., p. 363.
54. *Federalist Papers,* No. 62.
55. Madison, p. 370.
56. Ibid.
57. Ibid., 367.
58. Ibid., p. 368.
59. Ibid.
60. Elliot, 2:538.
61. Ibid., 4:43.
62. Madison, p. 527.
63. Elliot, 3:516.
64. Madison, p. 535.
65. Ibid., p. 536.
66. *Federalist Papers,* No. 66.
67. Elliot, 4:44.
68. *Federalist Papers,* No. 69.

CONGRESS OF THE UNITED STATES

CHAPTER

THE ORGANIZATION OF CONGRESS

There were a thousand pitfalls in prescribing the manner in which the national legislature should be organized. After the Declaration of Independence in 1776, the boisterous and sometimes tempestuous experience which the Founders observed in their own state legislatures taught them some pungent lessons by 1787 which they wrote into the Constitution to provide for the efficient operation of Congress.

The elaborate details outlined in this chapter will demonstrate the careful study which the Founders put into every aspect of their plan.

If a person watches carefully for them, many of the "ancient principles" as well as the Founders' more recent lessons in political experience will be observed in the intricate machinery provided for Congress.

Of course, there have always been those who have rated legislative bodies in terms of their "efficiency," which in the fascist states and the communist assemblies always means the rapid and enthusiastic endorsement of executive pronouncements. However, in the United States the Founders placed in the hands of Congress twenty enumerated powers, all of which have to be skillfully administered within the strict limitations, guidelines, or "chains" which the Constitution prescribes. This means that legislation, of necessity, must move slowly through a screening process more refined than that of any other legislature in the world.

To the Founders, the goal was not more laws, but the preservation of freedom. The entire American success formula is based on this premise. With the Founders the maxim that "he who governs least, governs best" was not an idle adage.

PROVISION 46

From Article I.4.1

It will be up to the legislature of each state to determine the time, places, and manner in which elections shall be held for federal offices, but the Congress may at any time pass a law to alter such arrangements. An exception was made as to the places of choosing Senators, since they were originally chosen by the state legislatures.

This provision gave the states the RIGHT to set the time and conditions for the election of federal officers, but it reserved to the Congress the RIGHT to intervene if necessary.

Congress left this provision untouched until 1842. By that time it was plain that some inequities had developed in the state electoral process and Congress decided to intervene. Up to that time it had been the custom to allow voters to have a "general ticket" on which were listed ALL of those who were running for the House of Representatives. Each voter was permitted to vote for as many of the candidates as his state was allowed. This procedure operated to the distinct advantage of the strongest political party, since the party could elect its candidates on a statewide ticket when some of them could not have been elected in their own districts. Consequently, the strong party won all the seats for that state. The Congress decided that the states should divide themselves into congressional voting districts with one representative being elected from each. Thus, the Congressmen from the same state might belong to different parties.

In 1866 the Congress again intervened to compel state legislatures to meet on a certain day and stay in session until they had elected Senators to represent them. Some of the legislatures would reach an impasse with both houses stubbornly deadlocked. No candidate could be elected

and the state would be without a Senator. The new procedure was designed to prevent any legislature from adjourning until they had performed this function.

In 1872 Congress declared a general election day for all of the states. It was set up to take place on Tuesday following the first Monday in November of the even years.

Another change was the use of voting machines, which became legally acceptable in 1899.

In more recent times, Congress made a new restriction by limiting the amount of money a Senator or Representative would be allowed to spend in a campaign. However, a great many clever devices have been invented to get around these restrictions.

The Nineteenth and Twenty-Sixth Amendments made two important changes when they provided that women and those who have reached eighteen years of age are permitted to vote in federal elections.

Corruption in state elections has provoked the Congress to pass a number of bills which make it a federal crime for anyone to participate in an election (wherein federal officers are being elected) and the accused is guilty of:

1. False registration;
2. Bribery;
3. Voting without a legal right;
4. Making a false return of the votes cast;
5. Interfering with the officers of an election;
6. Neglect of duty by an election officer;
7. Intimidating or otherwise violating the civil rights of any qualified person to vote.

Election frauds occur often enough to require constant scrutiny by both the government and the citizens participating in the election process. Since the two parties use volunteers to staff their polling places at each election it is not difficult to manipulate the counting of votes if the representatives of both major parties are not alert.

It will be seen from the following quotations that the Founders were a little nervous about Principle 46, which initially gave the states a considerable amount of power. Many of them saw serious potential abuses and therefore insisted that the federal government have the right to intervene if necessary.

During the debates they addressed the following questions:

- *What was the basic purpose of this provision?*

Regulating Power Over the States

Madison: "This was meant to give the national legislature a power not only to alter the provisions of the states, but to make regulations, in case the states should fail or refuse altogether."[1]

- *Why is the Congress allowed to intervene and change state procedures if it so desires?*

This Provision Necessary for the Preservation of the Nation

Wilson: "This, Mr. President, is not only a proper, but a necessary power, for every government should possess the means of self-preservation. We have seen that the States may alter or amend the proposed system, if they should find it incompatible with their interest and independency, and the same reason justifies and requires that Congress should have an ultimate control over those elections, upon which

its parity and existence must depend. What would otherwise be the consequence?

"One or more states might refuse to make any regulations upon the subject, or, might make such regulations as would be highly inconvenient and absurd—if the election were appointed to be held at Pittsburgh, or, if a minority, tumultuously breaking up the legislatures, should defeat the disposition of the majority to appoint any place for that purpose, shall Congress have no authority to counteract such notorious evils, but continue in absolute dependence upon the will of a refractory state?

"I say not, Sir, that these are probable events; but as they are certainly possible, it was the duty of the late convention to provide against the mischief, and to secure to the general government a power, in the *dernier* resort, for the more perfect organization of its constituent parts. In short, Sir, this system would be nugatory without the provision so much deprecated, as the national government must be laid prostrate before any state in the union, whose measures might at any time be influenced by faction and caprice. These, therefore, are the reasons upon which it is founded, and in spite of every perversion, it will be found only to contain the natural maxims of self preservation."[2]

Congress Must Have Power to Correct Mischievous State Procedures

McKean: "But if...an inconvenient situation should be appointed for holding the election, or if the time and manner should be made inconsistent with the principles of a pure and constitutional election, can it be doubted that the federal government ought to be enabled to make the necessary reform in a business so essential to its own preservation and prosperity? If, for instance, the states should direct the suffrage of their citizens to be delivered *viva voce* [orally] is it not necessary that the Congress should be authorized to change that mode, so injurious to the freedom of election, into the mode by [secret] ballot so happily calculated to preserve the suffrages of the citizens from bias and influence?"[3]

• *Does the Congress share the responsibility to see that elections are free and fair?*

Congress Should Judge Elections

McKean: "Every House of Representatives are of necessity to be the judges of the elections, returns, and qualifications of its own members. It is therefore their province, as well as duty, to see that they are fairly chosen, and are the legal members; for this purpose, it is proper they should have it in their power to provide that the times, places, and manner of election should be such as to insure free and fair elections."[4]

Some States Might Subvert the Election Process

Jay: "Every government was imperfect, unless it had a power of preserving itself. Suppose that, by design or accident, the states should *neglect* to *appoint representatives;* certainly there should be some constitutional remedy for this evil. The obvious meaning of the paragraph was, that, if this neglect should take place, Congress should have power, by law, to support the government, and prevent the dissolution of the Union."[5]

Considerations Favoring This Provision

Writing on this issue, the Secretary of the Massachusetts Convention noted,

"Several other gentlemen went largely into the debate on the 4th section, which those in favor of it demonstrated to be necessary; first, as it may be used to correct a negligence in elections; secondly, as it will prevent the dissolution of the government by designing and refractory states; thirdly, as it will operate as a check, in favor of the people, against any designs of the federal Senate, and their constituents, the state legislatures, to deprive the people of their right of election; and fourthly, as it provides a remedy for the evil, should any state, by invasion, or other cause, not have it in its power to appoint a place, where the citizens thereof may meet to choose their federal representatives."[6]

• *Why was the place for choosing Senators by state legislatures excluded from congressional intervention?*

Congress Might Abuse the Power

The notes of the North Carolina ratifying convention recorded: "Mr. J. Taylor wished to know why the states had control over the place of electing senators, but not over that of choosing the representatives.

"Mr. Spaight answered, that the reason of that reservation was to prevent Congress from altering the places for holding the legislative assemblies in the different states."[7]

• *How serious could state manipulation of the election process become?*

Improper Regulation of Elections by the States Could Be Fatal

Nicholas: "If the state legislature, by accident, design, or any other cause, would not appoint a place for holding elections, then there might be no election till the time was past for which they were to have been chosen; and as this would eventually put an end to the Union, it ought to be guarded against; and it could only be guarded against by giving this discretionary power, to the Congress, of altering the time, place, and manner of holding the elections....

"Another strong argument for the necessity of this power is, that, if it was left solely to the states, there might have been as many times of choosing as there are states. States having solely the power of altering or establishing the time of election, it might happen that there should be no Congress. Not only by omitting to fix a time, but also by the elections in the states being at thirteen different times, such intervals might elapse between the first and last election, as to prevent there being a sufficient number to form a house; and this might happen at a time when the most urgent business rendered their session necessary; and by this power, this great part of the representation will be always kept full, which will be a security for a due attention to the interest of the community; and also the power of Congress to make the times of elections uniform in all the states, will destroy the continuance of any cabal, as the whole body of representatives will go out of office at once."[8]

The Danger of Large States Combining to Destroy the National Government

W. Davie: "This control over elections to Congress... was, to prevent a dissolution of the government by designing states.... Without this control in Congress, those large states might successfully combine to destroy the general government....

Control over elections — and a desire for fairness — was a point of concern to the Founders. Here a Negro voter is being unfairly pressured by a white.

Another principal reason was, that it would operate, in favor of the people, against the ambitious designs of the federal Senate.... If Congress had the power of making the law of elections operate throughout the United States, no state could withdraw itself from the national councils, without the consent of a majority of the members of Congress.... It was necessary to give Congress this power, to keep the government in full operation.... When the councils of America have this power over elections, they can, in spite of any faction in any particular state, give the people a representation. Uniformity in matters of election is also of the greatest consequence. They ought all to be judged by the same law and the same principles, and not to be different in one state from what they are in another.... Congress ... may alter the manner of holding the election, but cannot alter the tenure of their office. They cannot alter the nature of the elections; for it is established, as fundamental principles, that the electors of the most numerous branch of the state legislature shall elect the federal representatives, and that the tenure of their office shall be for two years; and likewise, that the senators shall be elected by the legislatures, and that the tenure of their office shall be for six years.... Power is given to Congress, and extending only to the *time* of holding, the *place* of holding, and the manner of *holding*, the election.... Congress ought, therefore, to possess constitutional power to give the people an opportunity of electing representatives, if the states neglect or refuse to do it."[9]

A Matter of Self-Preservation for the National Government

Hamilton: "Every government ought to contain in itself the means of its own preservation....

"Nothing can be more evident than that an exclusive power of regulating elections for the national government, in the hands of the state legislatures, would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it by neglecting to provide for the choice of persons to administer its affairs.... If we are in a humor to presume abuses of power, it is as fair to presume them on the part of the state governments as on the part of the general government.... It is more consonant to the rules of a just theory to trust the Union with the care of its own existence than to transfer that care to any other hands....

"The scheme of separate confederacies, which will always multiply the chances of ambition, will be a never-failing bait to all such influential characters in the state administrations as are capable of preferring their own emolument and advancement to the public weal. With so effectual a weapon in their hands as the exclusive

power of regulating elections for the national government, a combination of a few such men, in a few of the most considerable states, where the temptation will always be the strongest, might accomplish the destruction of the Union by seizing the opportunity of some casual dissatisfaction among the people (and which perhaps they may themselves have excited) to discontinue the choice of members for the federal House of Representatives. It ought never to be forgotten that a firm union of this country, under an efficient government, will probably be an increasing object of jealousy to more than one nation of Europe; and that enterprises to subvert it will sometimes originate in the intrigues of foreign powers and will seldom fail to be patronized and abetted by some of them. Its preservation, therefore, ought in no case that can be avoided to be committed to the guardianship of any but those whose situation will uniformly beget an immediate interest in the faithful and vigilant performance of the trust."[10]

• *Why wasn't a particular date for elections specified in this provision?*

Impossible to Determine Uniform Date

Hamilton: "It may be asked, Why, then, could not a time have been fixed in the Constitution? ... It was a matter which might safely be intrusted to legislative discretion; and ... if a time had been appointed, it might, upon experiment, have been found less convenient than some other time.... And ... it would have been hardly advisable ... to establish as a fundamental point, what would deprive several states of the convenience of having the elections for their own governments and for the national government at the same epoch."[11]

Wanted to See What Experience Would Indicate

Madison: "The necessity of a general government supposes that the state legislatures will sometimes fail or refuse to consult the common interest at the expense of their local convenience or prejudices. The policy of referring the appointment of the House of Representatives to the people and not to the legislatures of the states supposes that the result will be somewhat influenced by the mode. This view of the question seems to decide that the legislatures of the states ought not to have the uncontrolled right of regulating the times, places, and manner, of holding elections. These were words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power. Whether the electors should vote by ballot, or viva voce; should assemble at this place or that place; should be divided into districts, or all meet at one place; should all vote for all the representatives, or all in a district vote for a number allotted to the district—these and many other points would depend on the legislatures, and might materially affect the appointments. Whenever the state legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed. Besides, the inequality of the representation in the legislatures of particular states would produce a like inequality in their representation in the national legislature, as it was presumable that the counties having the power in the former case would secure it to themselves in the latter. What danger could there be in giving a controlling power to the national legislature? Of whom was it to consist? First, of a senate to be chosen by the state legislatures. If the latter, therefore, could

be trusted, their representatives could not be dangerous. Secondly, of representatives elected by the same people who elect the state legislatures. Surely, then, if confidence is due to the latter, it must be due to the former. It seemed as improper in principle, though it might be less inconvenient in practice, to give to the state legislatures this great authority over the election of the representatives of the people in the general legislature, as it would be to give to the latter a like power over the election of their representatives in the state legislature."[12]

PROVISION 47

From Article I.4.2

The Congress, consisting of both the House and the Senate, shall meet automatically once every year, on the first Monday in December unless they shall by law appoint a different day.

This provision gave the American people the RIGHT to have their national legislature meet automatically every year on a designated date. (Section 2 of the Twentieth Amendment, passed in 1933, changed the date to the 3rd day of January.)

The constitutional mandate to meet each year was designed to avoid the conflicts which continually occurred in England when the king convened and dissolved Parliament at his pleasure. Charles I ruled England for eleven years (1629-1640) without calling a Parliament meeting. As far back as Edward III (1327-1377) the Crown had consented to a statute requiring Parliament to meet at least once a year, but the English kings never carried it out. The American Founders wrote this provision into the Constitution so that the annual sessions of the Congress would take place automatically.

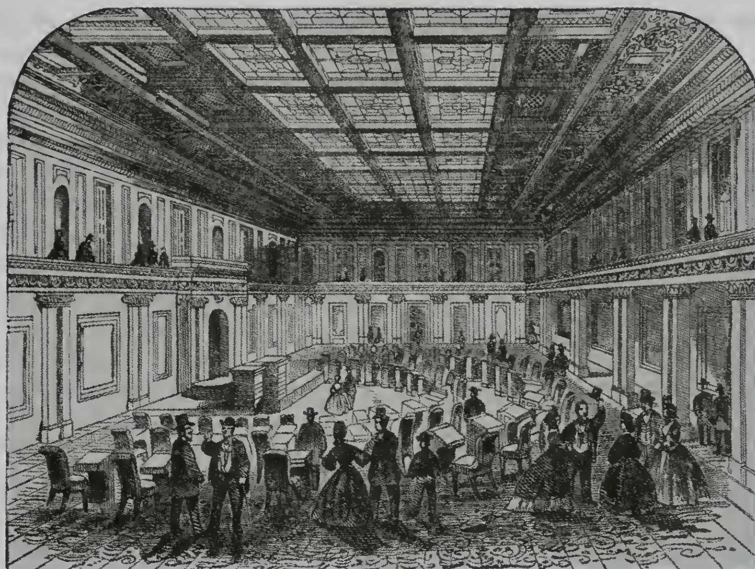
It is interesting that up to the time Washington was inaugurated as President, the States General of France had not been convened by the king for 175 years. One month after Washington became President, King Louis finally got around to convening the French States General— and as soon as they came together they precipitated the French Revolution.

During the debates the Founders addressed the following questions:

- *Why was it important to specify annual meetings for the Congress?*

Fixing Date Avoids Disputes and Confusion

Gorham: "If the time be not fixed by the Constitution, disputes will arise in the legislature; and the states will be at a loss to adjust thereto the times of their elections. In the New England states, the annual time of meeting had been long fixed by their charters and constitutions, and no inconvenience had resulted. He thought it necessary that there should be one meeting at least every year, as a check on the executive department."[13]



The early Senate chamber

Legislative and Investigative Powers of Congress Require Regular Session

Mason: "An annual meeting ought to be required as essential to the preservation of the Constitution. The extent of the country will supply business. And if it should not, the legislature, besides *legislative,* is to have *inquisitorial* powers, which cannot safely be long kept in a state of suspension."[14]

• *Is there sufficient business to require annual meetings automatically?*

Should Be Plenty of Work to Keep Congress Busy

Sherman: "Was decided for fixing the time, as well as for frequent meetings of the legislative body. Disputes and difficulties will arise between the two Houses, and between both and the states, if the time be changeable. Frequent meetings of parliament were required at the revolution in England, as an essential safeguard of liberty. So also are annual meetings in most of the American charters and constitutions. There will be business enough to require it. The western country, and the great extent and varying state of our affairs in general, will supply objects."[15]

• *Should Congress be allowed to fix a different date in the future?*

The Option of Making a Future Change

Randolph: "Was against fixing any day irrevocably; but as there was no provision made anywhere in the Constitution for regulating the periods of meeting, and some precise time must be fixed, until the legislature shall make provision ... he moved to add the words following: 'unless a different day shall be appointed by law' [which was approved]."[16]

• *Why was a meeting in December designated?*

Winter Was More Convenient Than Summer

Wilson: "The winter is the most convenient season for business."[17]

Ellsworth: "The summer will interfere too much with private business, that of almost all the probable members of the legislature being more or less connected with agriculture."[18]

Randolph: "The time is of no great moment now, as the legislature can vary it. On looking into the constitutions of the states, he found that the times of their elections, with which the elections of the national representatives would no doubt be made to coincide, would suit better with December than May, and it was advisable to render our innovations as little incommodious as possible."[19]

PROVISION

48

From Article I.5.1

The Senate and the House of Representatives shall each judge and determine whether or not its members have been properly elected to represent their respective constituencies.

The purpose of this provision was to give each body of the national legislature the RIGHT to determine the credentials and acceptability of those who came as delegates to serve with them.

When a member is suspected of being illegally elected, the House or Senate assumes its constitutional role of judging the matter by investigating the charges. For this purpose the Congress can issue a subpoena to compel a witness to appear before them and bring all the documents needed for study. The Congress can even issue a warrant for the arrest of a witness without any previous subpoena if there is good reason to believe the witness is hostile and would not respond to a subpoena. However, it cannot arrest or punish someone (other than one of its own members) for contempt in refusing to testify or produce records. Contempt charges must be brought against that person through the federal court system.

By refusing to allow a newly elected member to take the oath of office, the Senate or House does not thereby lose authority to conduct an investigation concerning the irregularities or illegal election procedures which constituted the reason for the prospective member's rejection.[20]

A state which allows a Senator or Representative to be elected by illegal procedures cannot afterwards claim that the rejection of their Senators or Representatives has deprived that state of equal representation.[21]

PROVISION 49

From Article I.5.1

Each House shall be the sole judge of whether or not an elected Senator or Representative has the required qualifications.

This provision gives both the House and the Senate the RIGHT to inquire into the qualifications of Senators or Representatives who report to Washington as the official representatives of their constituencies.

In 1919 the House refused to seat a Wisconsin socialist, Victor L. Berger, because of his previous pacifist agitation against the participation of the United States in World War I.

In 1967 the House excluded Adam Clayton Powell of New York because of "gross misconduct," although the Supreme Court later overruled this House action.

The Senate refused to seat Frank Smith of Illinois in 1928 because $123,000 of his campaign expenses had been contributed by corporations regulated by the Illinois Commerce Commission, of which Smith was a member.

PROVISION 50

From Article I.5.1

A majority of the Senate and a majority of the House of Representatives shall be required in order to constitute a quorum to do the business of these houses.

This provision gives the American people the RIGHT not to have any law passed unless a majority of their representatives are present to consider the matter before a vote is taken.

The Founders feared the possibility of a small oligarchy taking over in each of the houses and passing laws with less than a majority present.

The Founders raised the following question in connection with this provision:

- *Why not require all members to be present?*

Power in Few Not Attending

Iredell: "Do gentlemen mean that it ought to have been provided by the Constitution, that the whole body should attend before a particular business was done? Then it would be in the power of a few men, by neglecting to attend, to obstruct the public business, and possibly bring on the destruction of their country."[22]

• *Why is majority rule the best?*

Merits of Majority Rule

Madison: "It has been said that more than a majority ought to have been required for a quorum; and in particular cases, if not in all, more than a majority of a quorum for a decision.... In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority. Were the defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or, in particular emergencies, to extort unreasonable indulgences.... It would facilitate and foster the baneful practice of secessions ... a practice subversive of all the principles of order and regular government; a practice which leads more directly to public convulsions and the ruin of popular governments than any other which has yet been displayed among us."[23]

• *How much danger might arise from a minority passing laws?*

Minority Power Might Give Rise to a Junta Government

Mason: "In this extended country, embracing so great a diversity of interests, it would be dangerous to the distant parts to allow a small number of members of the two houses to make laws. The central states could always take care to be on the spot; and by meeting earlier than the distant ones, or wearying their patience, and outstaying them, could carry such measures as they pleased. He admitted that inconveniences might spring from the secession of a small number; but he had also known good produced by an apprehension of it. He had known a paper emission prevented by that cause in Virginia. He thought the Constitution, as now moulded, was founded on sound principles, and was disposed to put into it extensive powers. At the same time he wished to guard against abuses as much as possible. If the legislature should be able to reduce the number at all, it might reduce it as low as it pleased, and the United States might be governed by a junta."[24]

The Founders made constitutional provisions that enabled minorities and the majority to work together in unity.

PROVISION

51

From Article I.5.1

When no quorum is present in either of the houses of Congress, the minority may meet for the purpose of calling up the absent members and compelling them, where necessary, to suffer certain penalties until such time as a quorum is in attendance. The smaller group can also adjourn from day to day until a quorum is attained.

This provision gives a minority of the members in the Senate or the House the RIGHT to meet and impose penalties on their fellow legislators until there are enough present to constitute a quorum.

Dr. Edward Corwin describes the ruling on a situation where a quorum is present, but only a minority vote. He says:

"For many years the view prevailed in the House of Representatives that it was necessary for a majority of the members to VOTE on any proposition submitted to the House in order to satisfy the constitutional requirement of a quorum. It was the common practice for the opposition to break a quorum by refusing to vote. This was changed in 1890, by a ruling made by Speaker Reed, and later embodied in rule XV of the House, that members present in the chamber but not voting would be counted in determining the presence of a quorum."[25]

"So long as a quorum is present [at the opening of the day's business] it is sufficient to decide matters with a majority of those available to vote even though they do not constitute a majority of the entire membership of the House."[26]

This means that if the majority start the session and then report to their committees or go back to their offices, the remainder can go ahead and transact whatever business arises. As the Supreme Court has stated, "A quorum once established is presumed to continue unless and until a point of no quorum is raised."[27]

A point of "no quorum" would be raised if an important vote were about to be taken. Alert party whips or other interested members would demand a quorum and the whole House or Senate would be ordered to reassemble.

Power to Compel Attendance Is Essential to National Survival

G. Morris: "The secession of a small number ought not to be suffered to break a quorum. Such events in the states may have been of little consequence. In the national councils they may be fatal. Besides other mischief, if a few can break up a quorum, they may seize a moment when a particular part of the continent may be in need of immediate aid, to extort, by threatening a secession, some unjust and selfish measure."[28]

PROVISION

52

From Article I.5.2

The House and the Senate shall each determine the rules and proceedings by which it will carry out its responsibilities.

This provision further implemented the RIGHT of the House and the Senate to each perform their functions with complete independence and self-determination.

The Supreme Court has held that in setting up the rules of procedures the two Houses of Congress may not "ignore constitutional restraints or violate fundamental rights ... and within the limits suggested [each House enjoys the absolute right] beyond the challenge of any other body or tribunal." (144 U.S. 1, 5) In other words, the Senate might criticize the rules of procedure set up by the House of Representatives but can do nothing about it whatsoever. It is none of the Senate's business. Neither can the House alter the rules of the Senate. They are each completely independent.

Over the years a number of customs and practices have developed which are unique. For example, in the Senate there is a tradition of "senatorial courtesy." This applies to a situation where the President has nominated a person from a state where one or both of the Senators from that state find the nomination offensive or at least objectionable. As a matter of "senatorial courtesy" the rest of the Senate honor their objections and refuse to confirm the appointment.

The Senate also allows its members to filibuster, while the House does not.

PROVISION

53

From Article I.5.2

The House and the Senate shall each have the authority to punish its own members for disorderly behavior.

This provision gives the RIGHT to the House and the Senate to police their own proceedings and take whatever action is necessary to maintain proper order and decorum.

If there is a breach of the peace on the floor of either house, the presiding officer does not have to call the police but he can order the sergeant at arms to quiet the disorder and even arrest those responsible for the disturbance.

PROVISION

54

From Article I.5.2

The House and the Senate shall each have the authority to expel a member for improper behavior by a two-thirds vote.

This provision gives a Senator or Representative the RIGHT to occupy his seat unless two-thirds of the members of that particular house vote for his expulsion.

The Supreme Court has held that if the misconduct of a member of either house is embarrassing to the house, "the right to expel extends to all cases where the offense is . . . inconsistent with the trust and duty of a member."[29]

In 1797 Senator William Blount was expelled for using improper influence on an Indian agent.

In 1967 Congressman Adam Clayton Powell was expelled from the House of Representatives for obtaining $40,000 in government funds by fraud and forgery.

Why Two-Thirds Was Required for Expulsion

In connection with this provision James Madison "observed that the right of expulsion was too important to be exercised by a bare majority of a quorum; and, in emergencies of faction, might be dangerously abused."[30]

Censure and Reprimand

When a member is guilty of reprehensible conduct but it is not considered a sufficient basis for expulsion, the House or the Senate may wish to call the member before the podium and subject him to a "censure" which is read to him in the presence of the full house.

The lightest punishment of all is a "reprimand," which also requires the member to appear before the podium and have the reprimand read before the full house.

In 1983 two members of the House of Representatives were censured for immoral conduct, and in 1984 one was reprimanded for failure to include his wife's income on his financial disclosure statement. (Around 150 other Congressmen had been told the procedure was acceptable and so there was hesitancy to condemn one member for doing what so many others had been advised was a legal procedure. Had it not been for strong pressure from the media, as well as pressure from the opposition party, the reprimand might not have been given.)

Adam Clayton Powell was expelled from the House of Representatives in 1967 for fraud and forgery.

PROVISION

55

From Article I.5.3

Each house shall keep a journal of its proceedings.

This provision was designed to give the people the RIGHT to know what its national legislative body is doing and saying.

The Supreme Court has declared that the purpose of publishing the daily journal of both houses is "to ensure publicity to the proceedings of the legislature and a correspondent responsibility of the members to their respective constituents."[31] Because the *Congressional Record* is so voluminous, a "Digest" is published as the most practical way to keep abreast of congressional proceedings.

PROVISION

56

From Article I.5.3

The journal of each house shall be published from time to time.

This provision gives the people the RIGHT to have a record of congressional proceedings for study and review.

In the beginning there was some question as to how often the journal should be published. Since 1873 a complete record of the proceedings of both the House and the Senate have been published in the *Congressional Record* on a daily basis.

A special procedure is set up to allow the members of Congress to proofread the statements they made on the floor or to add information where approval was obtained in advance. This procedure consists of having a complete transcript on the desk of every member of the House and Senate each day, giving the full text of the proceedings the day before. It is at this point that corrections and additions may be made. It is even possible to include a speech which was never actually given on the floor.

The Congress received extensive criticism in 1984 when it was discovered that Congressmen were saying one thing on the floor and then changing their remarks in the *Congressional Record* to reflect a different and sometimes opposite point of view. This "courtesy" of allowing Congressmen to alter their remarks has been damaging to the reputation of the *Congressional Record* as an accurate report of legislative proceedings.

Here are the views of some of the Founders:

Publication Should Be Frequent

Lee: "It must be supposed to mean, in the common acceptation of language, short, convenient periods."[32]

Why No Specific Period for Publication Was Mentioned

Madison: "Thought it much better than if it had mentioned any specified period; because, if the accounts of the public receipts and expenditures were to be published at short, stated periods, they would not be so full and connected as would be necessary for a thorough comprehension of them, and detection of any errors. But by giving them an opportunity of publishing them from time to time, as might be found easy and convenient, they would be more full and satisfactory to the public, and would be sufficiently frequent."[33]

Journal Should Be Published at Least by the Close of Each Session

W. Davie: "There could be no doubt of their publishing them as often as it would be convenient and proper, and that they would conceal nothing but what it would be unsafe to publish at the end of every session."[34]

PROVISION

57

From Article I.5.3

Any matter may be excluded from the journal which, in the judgment of that house, is sufficiently sensitive that it should be kept secret.

This provision gives each house the RIGHT to keep out of the record any national defense or other sensitive material which the majority of that house feels should be kept secret.

Americans, however, pride themselves in having public business publicly reported. When the Congress or the committee wishes to close the doors for a confidential discussion, it is called an "Executive Session." Seldom, however, are such sessions kept secret for long, since the opposition group tends to "leak" the information to the press. Nevertheless, during sessions dealing with information which is highly dangerous to the security of the nation, it has been demonstrated that the members of Congress can keep a secret.

The Executive Journal of the Senate is the publication which contains secret, classified information. It can be released to the public only after the Senate has authorized it.

Some views of the Founders are as follows:

Security Dictates Secrecy

Iredell: "In time of war it was absolutely necessary to conceal the operations of government; otherwise no attack on an enemy could be premeditated with success, for the enemy could discover our plans soon enough to defeat them — that it was no less imprudent to divulge our negotiations with foreign powers, and the most salutary schemes might be prevented by imprudently promulgating all the transactions of the government indiscriminately."[35]

The Right to Know

Wilson: "The people have a right to know what their agents are doing or have done, and it should not be in the option of the legislature to conceal their proceedings."[36]

PROVISION

58

From Article I.5.3

Decisions on any question before each house will be settled on the basis of the number of "yeas" and "nays" of its members.

This provision gives the American people the RIGHT to have questions settled by majority rule. In certain cases, of course, the Constitution requires a super-majority rule of two-thirds.

As has been previously pointed out, a quorum is considered to be in attendance once a quorum has been established at the beginning of the session. Thereafter, the number present on the floor can vote on routine matters even if a quorum is not present. However, if a vote is in any way significant the party whips or other members present will raise the question of "no quorum," and the vote is postponed until the members have been summoned from their offices and various committee meetings.

The *Journal of the House* is accepted in evidence to show the vote on any matter, and a statement that a quorum was present is presumed to be the truth even when the count of the yeas and nays does not reflect it.[37]

PROVISION

59

From Article I.5.3

If one-fifth of those present desire to have a recorded vote of each member on a particular issue, the presiding officer will ask for a roll call and the vote of each member will be shown in the journal.

This provision gives a fifth of the membership in attendance in either house the RIGHT to demand a recorded vote of each member who is present and voting on a particular issue.

Of course, a roll call for a recorded vote is very time consuming, and that is why routine matters are settled by a voice vote of yeas and nays or a "division of the house," where there is a physical count. Nevertheless, a recorded vote on critical issues becomes very important for future reference, particularly during an election when it is desirable to know exactly how an incumbent has voted.

In the Senate the clerk calls the name of each Senator and records his vote as he answers. A brief period is allowed for absentees to enter their vote before the count is finalized.

The House of Representatives is so large that the traditional, time-consuming

system of calling each name was replaced in 1973 with an electronic voting system. A representative may vote at any one of the voting boxes scattered throughout the floor of the House. He does this by inserting his computer card and pressing any one of three buttons marked "Yea," "Nay," or "Present." By indicating that he is merely "Present," the Congressman is signifying that he does not wish to vote on this particular issue either way. On some issues a vote of "Present" is not allowed. As each Congressman votes, it is displayed on a large screen before the House and is permanently recorded and then printed in the *Congressional Record.* Thus is established the "voting record" by which a member can be judged at the next election.

On some delicate and highly controversial issues, some members choose not to vote lest they lose election votes by taking a position which their opponents can publicize. However, in tabulating the voting record of a Senator or Congressman, failure to vote on a critical issue is given a minus score which reduces the member's standing on his voting index.

Congressional Record

United States of America PROCEEDINGS AND DEBATES OF THE 86th CONGRESS, FIRST SESSION

Vol. 105 WASHINGTON, WEDNESDAY, JANUARY 28, 1959 *No. 15*

House of Representatives

The House was not in session today. Its next meeting will be held on Thursday, January 29, 1959, at 12 o'clock noon.

Senate

WEDNESDAY, JANUARY 28, 1959

The Chaplain, Rev. Frederick Brown Harris, D.D., offered the following prayer:

Most gracious Lord, whose mercy endureth forever, with reverent tread we pause at this wayside shrine of devotion,

from the President of the United States, which, with the accompanying report, was referred to the Committee on Foreign Relations:

To the Congress of the United States:

REPORT OF INTERAGENCY COMMITTEE ON AGRICULTURAL SURPLUS DISPOSAL—MESSAGE FROM THE PRESIDENT

The PRESIDENT pro tempore laid be-

Speeches and votes of Congressmen are reported in the Congressional Record.

PROVISION 60
From Article I.5.4

Because the Constitution required the participation of both houses to transact business, neither house can adjourn for more than three days without the consent of the other.

This provision gives each house the RIGHT to insist that the other house remain available and functioning throughout the session, except for intervals not to exceed three days.

The Founders were aware that in England the Parliament was often frustrated in its work because one of the houses would adjourn for long periods of time without the consent of the other. This was often done to prevent the passage of objectionable legislation. The present provision was designed to prevent this from happening in the United States.

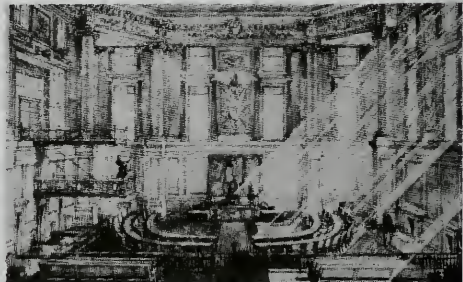
If either house could adjourn at pleasure it might completely obstruct public business and practically destroy a session of Congress. The two houses must agree upon adjournment, and if they cannot agree the President is authorized to order the adjournment.[38] Otherwise, the President has no control whatsoever over the adjourning of Congress.

PROVISION 61
From Article I.5.4

Neither house shall, without the consent of the other, vote to meet at a different place.

This provision was also designed to give each house the RIGHT to have the other house available at the location previously agreed upon, so that essential business might be transacted.

Once again this provision was the result of tactics used in the English Parliament to frustrate objectionable legislation by having one house adjourn to a different location without the consent of the other house.



The first home of the House of Representatives, in New York's Federal Hall.

PROVISION

62

From Article I.6.1

The compensation of Senators and Representatives shall be fixed by law and paid out of the treasury of the United States.

This provision gives the members of the Senate and the House of Representatives the RIGHT to receive compensation from the general treasury of the United States even though they are functioning as representatives of their respective states.

Compensation for legislators has had a hectic history. In Parliament in 1787, the members received no compensation whatever, since the honor associated with the office was considered sufficient. However, this effectively eliminated men of modest means from running for office. Not until 1893 did the British House of Commons receive a modest allowance. The Articles of Confederation required each state to maintain its delegates in Congress,[39] but the federal Constitution provided that "the Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States."[40]

The compensation of Senators and Representatives is set by law.

In 1789 the salary for both Senators and Representatives was fixed at $6.00 per day and subsequently changed as follows:

1815	$ 1,500	per year
1817	8	per day
1855	3,000	per year
1865	5,000	per year
1871	7,500	per year
1874	5,000	per year
1907	7,500	per year
1925	10,000	per year
1965	30,000	per year
1975	45,000	per year
2006	162,100	per year

Madison thought it was an "indecent thing" to have Congressmen empowered by the Constitution to fix their own salaries and increase them at will. It is interesting that nearly all the Congressmen who voted to give themselves an annual salary of $1,500 in 1815 were defeated at the next election. Furthermore, nearly every time since then that Congressmen have voted themselves a raise in pay they have found that it seriously jeopardized their political careers.

Only recently, rising resentment against the domination of the national government over the lives of the people has led some political scholars to suggest that Senators and Congressmen are becoming paid lackeys of the federal power structure. They suggest it would be a healthy change to have the states individually compensate their Senators and Represen-

tatives at a uniform salary fixed by Congress. Retirement and other emoluments would also be paid by the states. This idea was carefully considered by the Founders, as we will discuss shortly.

Meanwhile, six things make these elected officials look to the federal power structure for their financial security:

1. Their salaries and fringe benefits are all paid by the federal government.
2. They get a liberal retirement from the federal government.
3. They have a special government life insurance program with modest fees.
4. They have a special government health insurance program with modest fees.
5. They are often in line for high-salaried federal jobs in case they are defeated.
6. Benefits which go with their offices include:
   a. Special tax deductions,
   b. Travel allowance,
   c. Funds to hire a staff and assistants,
   d. Free medical care at the Capitol,
   e. Offices in Washington and in key cities at home,
   f. Free mailing privileges for official mail.

During the discussion of compensation to Congressmen, the following questions came up:

• *Is there a risk that Congressmen might vote themselves excessive compensation?*

Restraint from the Public

Sedgwick: "Can a man ... who has the least respect for the good opinion of his fellow-countrymen, go home to his constituents, after having robbed them by voting himself an exorbitant salary? This principle will be a most powerful check.... If left to themselves to provide for their own payment, as long as they wish for the good opinion of mankind, they will assess no more than they really deserve, as a compensation for their services."[41]

• *Why wasn't the subject of compensation left up to the states?*

Reason for Federal Compensation

Mason: "It would be improper, for other reasons, to leave the wages to be regulated by the states — first, the different states would make different provision for their representatives, and an inequality would be felt among them, whereas he thought they ought to be in all respects equal; secondly, the parsimony of the states might reduce the provision so low that, as had already happened in choosing delegates to Congress, the question would be not who were most fit to be chosen, but who were most willing to serve."[42]

• *Would state compensation detract from national interests?*

State Compensation Would Weaken the System

Randolph: "If the states were to pay the members of the national legislature, a dependence would be created that would vitiate the whole system. The whole nation has an interest in the attendance and services of the members. The national treasury therefore is the proper fund for supporting them."[43]

Would Make Senators Mere Agents of States

Madison (In response to the motion that the Senators be paid by their respective states.): "Considered this as a departure from a fundamental principle, and sub-

verting the end intended by allowing the Senate a duration of six years. They would, if this motion should be agreed to, hold their places during the pleasure of the state legislatures. One great end of the institution was that, being a firm, wise and impartial body, it might not only give stability to the general government, in its operations on individuals, but hold an even balance among different states. The motion would make the Senate, like Congress, the mere agents and advocates of state interests and views, instead of being the impartial umpires and guardians of justice and the general good."[44]

State Compensation Would Make Senate Dependent Upon States

Carroll: "The Senate was to represent and manage the affairs of the whole and not to be the advocates of state interests. They ought then not to be dependent on nor paid by the states."[45]

Benjamin Franklin's Special Perspective on Remuneration for Public Service

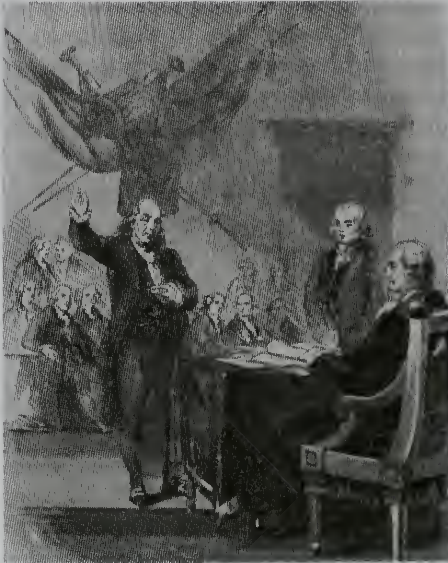
At the Constitutional Convention Benjamin Franklin felt there was too much preoccupation with salaries. He therefore addressed the Constitutional Convention:

"Sir, there are two passions which have a powerful influence in the affairs of men. These are *ambition* and *avarice;* the love of power and the love of money. Separately, each of these has great force in prompting men to action; but when united in view of the same object, they have in many minds the most violent effects. Place before the eyes of such men a post of *honor,* that shall at the same time be a place of *profit* and they will move heaven and earth to obtain it. The vast number of such places it is that renders the British government so tempestuous. The struggles for them are the true source of all those factions which are perpetually dividing the nation, distracting its councils, hurrying it sometimes into fruitless and mischievous wars, and often compelling a submission to dishonorable terms of peace.

"And of what kind are the men that will strive for this profitable preeminence, through all the bustle of cabal, the heat of contention, the infinite mutual abuse of parties, tearing to pieces the best of characters? It will NOT be the wise and moderate, the lovers of peace and good order, the men fittest for the trust. It will be the bold and the violent, the men of strong passions and indefatigable activity in their selfish pursuits. These will thrust themselves into your government, and be your rulers. And these, too, will be mistaken in the expected happiness of their situation; for their vanquished competitors, of the same spirit, and from the same motives, will perpetually be endeavoring to distress their administration, thwart their measures, and render them odious to the people."

Franklin's Prophecy

Franklin then continued: "Sir, though we may set out in the beginning with moderate salaries, we shall find that such will not be of long continuance. Reasons will never be wanting for proposed augmentations; and there will always be party for giving more to the ruler, that the rulers may be able to return to give more to them. Hence, as all history informs us, there has been in every state and kingdom a constant kind of warfare between the governing and the governed, the one striving to obtain more for its support, and the other to pay less. And this has alone occasioned great convulsions, actual civil wars, ending either in



In the Constitutional Convention, Benjamin Franklin spoke eloquently against rule by kings.

dethroning of the princes or enslaving the people. Generally, indeed, the ruling power carries its point, and we see the revenues of princes constantly increasing, and we see that they are never satisfied, but always in want of more. The more the people are discontented with the oppression of taxes, the greater need the prince has of money to distribute among his partisans, and pay the troops that are to suppress all resistance, and enable him to plunder at pleasure."

Prelude to Monarchy

Franklin feared the return of a monarchy. Said he: "There is scarce a king in a hundred who would not, if he could, follow the example of Pharaoh—get first all the people's money, then all their lands, and then make them and their children servants forever. It will be said that we do not propose to establish kings. I know it. But there is a natural inclination in mankind to kingly government. It sometimes relieves them from aristocratic domination. They had rather have one tyrant than 500. It gives more of the appearance of equality among citizens; and that they like. I am apprehensive, therefore—perhaps too apprehensive—that the government of these states may in future times end in a monarchy. But this catastrophe, I think, may be long delayed, if in our proposed system we do not sow the seeds of contention, faction, and tumult, by making our posts of honor places of profit. If we do, I fear that, though we employ at first a number and not a single person, the number will in time be set aside; it will only nourish the fetus of a king (as the honorable gentleman from Virginia very aptly expressed it), and a king will the sooner be set over us."

Franklin Cites an Exceptional but Admirable Example in England

"It may be imagined by some that this is a utopian idea, and that we can never find men to serve us in the executive department without paying them well for their services. I conceive this to be a mistake. Some existing facts present themselves to me, which incline me to a contrary opinion. The high sheriff of a county in England is an honorable office, but it is not a profitable one. It is rather expensive, and therefore not sought for. But yet it is executed, and well executed, and usually by some of the principal gentlemen of the county.... I only bring the instance to show that the pleasure of doing good and serving their country, and the respect such conduct entitles them to, are sufficient motives with some minds to give up a great portion of their time to the public, without the mean inducement of pecuniary satisfaction."

Franklin Points to the Example of George Washington

The best example of everything Frank-

lin was trying to say was George Washington, president of the Convention. Franklin therefore continued:

"To bring the matter nearer home, have we not seen the greatest and most important of our offices, that of general of our armies, executed for eight years together, without the smallest salary, by a patriot whom I will not now offend by any other praise; and this, through fatigues and distresses, in common with the other brave men, his military friends and companions, and the constant anxieties peculiar to his station? And shall we doubt finding three or four men in all the United States, with public spirit enough to bear sitting in peaceful council, for perhaps an equal term, merely to preside over our civil concerns, and see that our laws are duly executed? Sir, I have a better opinion of our country. I think we shall never be without a sufficient number of wise and good men to undertake, and execute well and faithfully, the office in question."

Not Just a Question of Economy

"Sir, the saving of the salaries, that may at first be proposed, is not an object with me. The subsequent mischiefs of proposing them are what I apprehend. And therefore it is that I move the amendment. If it is not seconded or accepted, I must be contented with the satisfaction of having delivered my opinion frankly, and done my duty."[46]

A Footnote on Franklin's Speech— Putting Principles into Practice

For nearly a half century, Franklin and most of the Founders had practiced these principles in their own lives. No better example can be found than Franklin himself. Take the summer of 1775, for instance, when Franklin was serving as a businessman, a member of Congress, and chairman of the Pennsylvania Committee of Safety. This committee had to provide weapons, munitions, gunboats, and stockades in preparation for the coming conflict. He describes a typical day to a friend in England as follows:

"My time was never more fully employed. In the morning at six, I am at the Committee of Safety, appointed by the [Pennsylvania] Assembly to put the province in a state of defense; which committee holds till near nine, when I am in Congress, and that sits till after four in the afternoon. Both of these bodies proceed with the greatest unanimity, and their meetings are well attended. It will scarce be credited in Britain, that men can be as diligent with us from zeal for the public good, as with you for thousands per annum. Such is the difference between uncorrupted new states, and corrupted old ones."[47]

Long before the Constitutional Convention, where Franklin had made his plea for modest salaries, Pennsylvanians had put the following provision in their state constitution:

"As every freeman, to preserve his independence (if he has not a sufficient estate), ought to have some profession, calling, trade, or farm, whereby he may honestly subsist, there can be no necessity for, nor use in, establishing offices of profit; the usual effects of which are dependence and servility, unbecoming freemen, in the possessors and expectants; faction, contention, corruption, and disorder among the people. Wherefore, whenever an office, through increase of fees or otherwise, becomes so profitable, as to occasion many to apply for it, the profits ought to be lessened by the legislature."[48]

PROVISION 63

From Article I.6.1

Except for treason, a felony, or a breach of the peace, Senators and members of the House of Representatives shall be immune from arrest when their respective houses are in session or when they are going to or returning from a session.

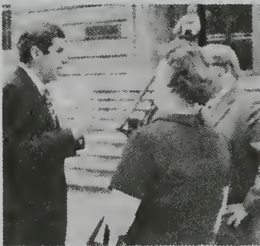
This provision gives the Senators and members of the House of Representatives the RIGHT to function without hindrance or obstruction from petty suits while the Congress is in session.

At the time of the Constitutional Convention there were a number of civil actions, such as alleged debt, for which a person could be arrested—and often there would be a substantial delay before bail could be secured or a release arranged. Arresting a legislator on petty charges was an old device in England to prevent the members of the House of Commons from voting on a crucial issue. Some of this had also occurred in the colonies. Therefore, this provision was included in the Constitution to protect the members of the House and Senate from harassment suits.

Today civil suits of this kind no longer constitute the disruptive threat which they did in earlier days.[49] It should also be noted that immunity from arrest under this provision does not protect the Senator or Congressman from arrest for criminal activities or a breach of the peace.[50] The courts have also held that this provision does not protect a member of Congress from being served with a criminal or civil process.[51]

For all practical purposes, this provision of the Constitution is now obsolete.

Senators and Representatives are not immune to arrest when they are in session if the offense involves treason, a felony, or breach of the peace.



PROVISION

64

From Article I.6.1

In order to insure complete freedom of speech by members of the House or the Senate, they shall not be questioned at any other place for what they may have said in a speech or debate while on the floor or in a committee hearing.

This provision gives a Congressman or Senator the RIGHT to speak freely about any subject or any person while serving in the national legislature without fear of being prosecuted for libel or slander. It is called "congressional immunity."

This provision also has an interesting history. In England the parliamentary allowance for a "loyal opposition" which forthrightly points out the weaknesses of the crown or the administration in power was slow to develop. Under Elizabeth and her two successors, members of Parliament were punished for speaking against the crown. Charles I attempted to seize five members of the House of Commons who had opposed him, which contributed to the outbreak of civil war and terminated with the decapitation of the king.

Although American Congressmen have no king to worry about, if it were not for this provision they could be sued for libel, slander, or perhaps defamation of character if they frankly spoke their minds on certain public issues or against certain public personalities. Even the Articles of Confederation provided that "freedom of speech and debate in the legislature shall not be impeached or questioned in any court or place out of Congress." The Constitution incorporated the same protection.

PROVISION

65

From Article I.6.2

No Senator or member of the House of Representatives may accept, during his or her term of office, a civil office or position in the United States government which was created or which had its salary, benefits, or other emolument increased during the time the appointee was serving in Congress.

This provision gave the people the RIGHT not to have the Senators or Congressmen create new jobs or high-salaried positions and then resign and have themselves appointed to these jobs by the President.

It is necessary to realize that in the beginning, Senators and Congressmen did not receive regular salaries but were paid so much per day during the short time the Congress was in session. Many ran for office with the hope of getting a permanent job with the government. It was feared that there might be collusion between the President and members of Congress whom he could bribe with promises of well-paying jobs if they voted the way he desired on some critical issue. This provision was designed to prevent this type of corruption or exercise of undue influence by the executive branch on the Congress.

Notice, however, that a Congressman could resign and be appointed to another government job which was already in existence, provided that that member of Congress had not voted to increase the compensation for that job.

The Founders did not want to discourage individuals of merit from running for Congress by making the restriction too severe.

The following comments by the Founders during the debates reflect their great concerns on both sides of this issue.

• *Can this provision eliminate a conflict of interest?*

Elected Officials Cannot Vote Themselves into Soft Government Jobs

Madison: "In this country, by this system, no new office can be taken by a member of the government, and if he takes an old one, he loses his seat. If the emoluments of any existing office be increased, he cannot take it."[52]

Avoiding the Lure of Patronage

Madison: "The members of the Congress are rendered ineligible to any civil offices that may be created, or of which the emoluments may be increased, during the term of their election. No offices therefore can be dealt out to the existing members but such as may become vacant by ordinary casualties."[53]

Members Eligible for Appointment to Other Offices

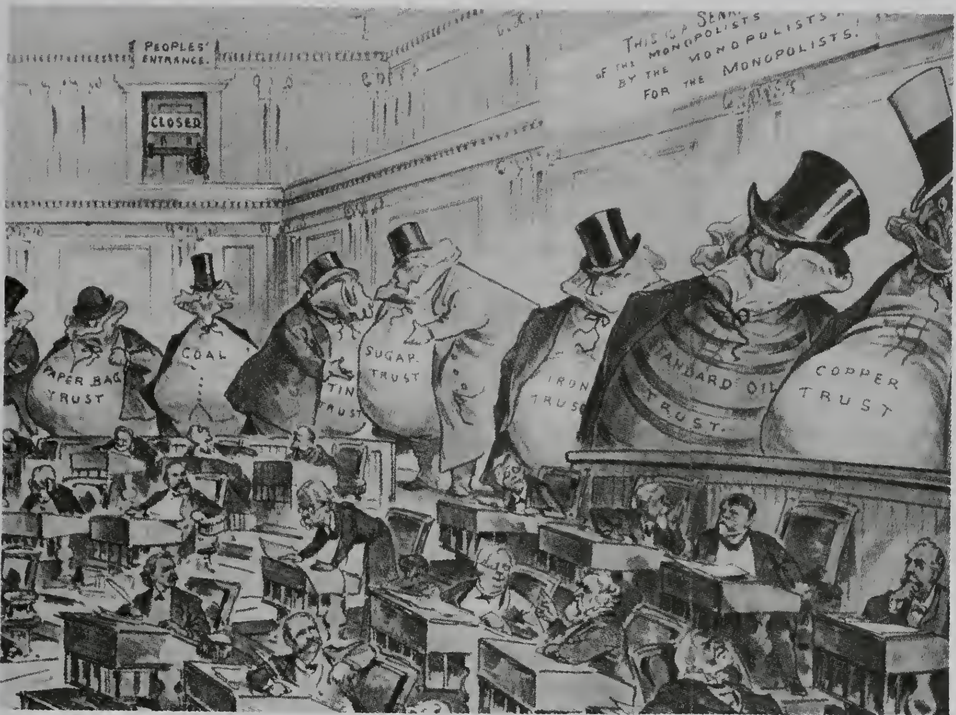
Madison: "He supposed that the unnecessary creation of offices, and increase of salaries, were the evils most experienced, and that if the door were shut against them, it might properly be left open for the appointment of members to other offices as an encouragement to legislative service."[54]

Since sessions of Congress originally occupied only three or four months out of the year, the question arose as to whether members of Congress might continue to be employed in state offices.

• *What about appointment to state offices?*

Don't Destroy Incentive to Run for Congress

Madison: "The objects to be aimed at were to fill all offices with the fittest characters, and to draw the wisest and most worthy citizens into the legislative service.... The impulse to the legislative service was evinced by experience to be in general too feeble with those best qualified for it.... It would therefore be impolitic to add fresh objections to the legislative service by an absolute disqualification of its members. The point in question was whether this would be an objection with the most capable citizens.



The Founders took pains to prevent graft and corruption. They knew that tyranny of money interests can be as dangerous as any other form of tyranny if it gains undue influence over the White House or Congress.

Arguing from experience, he concluded that it would. The legislature of Virginia would probably have been without many of its best members, if in that situation they had been ineligible to Congress, to the government, and other honorable offices of the state."[55]

This Restriction Should Apply Only to Federal Positions

Mercer: "It is a great mistake to suppose that the paper we are to propose will govern the United States. It is the men whom it will bring into the government, and interest in maintaining it, that are to govern them. The paper will only mark out the mode and the form. Men are the substance and must do the business. All government must be by force or influence.... There will be no ... force here; influence, then, must be substituted; and he would ask whether this could be done if the members of the legislature should be ineligible to offices of [the federal government]; whether such a disqualification would not determine all the most influential men to stay at home and prefer appointments within their respective states."[56]

PROVISION

66

From Article I.6.2

No person employed in the United States government may at the same time serve as a Senator or member of the House of Representatives.

This provision gives the people the RIGHT to have their elected representatives function independent of the executive and judicial branches of government. Obviously, holding a government job while serving in Congress would be a most serious conflict of interest and violate the doctrine of "separation of powers."

This question aroused vigorous debate during the Constitutional Convention, since it had an extensive history in the English Parliament. For example, under Henry VIII (1509-1547) most of the House of Commons were beholden to the king for the well-paying offices to which he had appointed them. As a result, this Parliament dutifully passed a bill releasing the king from all the debts he owed his subjects!

If Congress were to include a considerable number of members who held offices by appointment from the President, the whole check-and-balance system would collapse and the independence of the Congress would be seriously undermined.

Even the Articles of Confederation (Article V) forbade any Congressman from holding an office in the government for which he received a salary or other benefit.

• *What protection does this clause of the Constitution provide?*

This Provision Will Prevent Intrigues and Corruption

Wilson: "Another good quality in this Constitution is, that the members of the legislature cannot hold offices under the authority of this government. The operation of this, I apprehend, would be found to be very extensive, and very salutary, in this country, to prevent those intrigues, those factions, that corruption, that would otherwise rise here, and have risen so plentifully in every other country. The reason why it is necessary in England to continue such influence, is, that the crown, in order to secure its own influence against two other branches of the legislature, must continue to bestow places; but those *places produce the opposition* which frequently runs so strong in the British Parliament.

"Members who do not enjoy offices combine against those who do enjoy them. It is not from principle that they thwart the ministry in all its operations. No; their language is, Let us turn them out, and succeed to their places. The great source of corruption, in that country, is, that persons may hold offices under the crown, and seats in the legislature, at the same time."[57]

Minimizing the Curse of Bribery and Corruption

Wilson: "It is, perhaps, impossible, with

all the caution of legislators and statesmen, to exclude corruption and undue influence entirely from government. All that can be done, upon this subject, is done in the Constitution before you. Yet it behooves us to call out, and add every guard and preventive in our power. I think, sir, something very important, on this subject, is done in the present system; for it has been provided, effectually, that the man that has been bribed by an office shall have it no longer in his power to earn his wages. The moment he is engaged to serve the Senate, in consequence of their gift, he no longer has it in his power to sit in the House of Representatives; for 'No representative shall, during the term for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time.' And the following annihilates corruption of that kind: 'And no person holding any office under the United States shall be a member of either house during his continuance in office.' So the mere acceptance of an office, as a bribe, effectually destroys the end for which it was offered."[58]

---

1. Madison, p. 372.
2. Jensen, *The Documentary History of the Ratification of the Constitution*, 2:405–6.
3. Ibid., p. 413.
4. Elliot, 2:535.
5. Ibid., p. 326.
6. Ibid., p. 35.
7. Ibid., 4:70.
8. Ibid., 3:9–11.
9. Ibid., pp. 59–62, 66.
10. *Federalist Papers*, No. 59.
11. Ibid., No. 61.
12. Madison, p. 371.
13. Ibid., p. 348.
14. Ibid., p. 349.
15. Ibid.
16. Ibid.
17. Ibid., p. 350.
18. Ibid.
19. Ibid.
20. 279 U.S. 597, 614.
21. Ibid., 615.
22. Elliot, 4:130.
23. *Federalist Papers*, No. 58.
24. Madison, p. 376.
25. Edward S. Corwin, *The Constitution and What It Means Today*, pp. 127–28.
26. Ibid., p. 128.
27. 338 U.S. 93–95.
28. Madison, p. 377.
29. 166 U.S. 661, 669, 670.
30. Madison, p. 378.
31. 143 U.S. 649, 670.
32. Elliot, 3:459.
33. Ibid., p. 460.
34. Ibid., 4:72.
35. Ibid., p. 73.
36. Madison, p. 381.
37. 144 U.S. 1, 4.
38. Article II, section 3.
39. Article V, section 3.
40. Article I, section 6, paragraph 1.
41. Elliot, 2:53.
42. Madison, pp. 92–93.
43. Ibid., p. 147.
44. Ibid., p. 172.
45. Ibid., p. 403.
46. Smyth, *The Writings of Benjamin Franklin*, 9:591–95.
47. Ibid., 6:409.
48. Ibid.
49. See 127 U.S. 67.
50. See 207 U.S. 425, 446.
51. See 293 U.S. 83 for the ruling on the civil process and *U.S. v. Cooper* in 4 Dall. 341 for the ruling on a criminal process.
52. Elliot, 3:399.
53. *Federalist Papers*, No. 55.
54. Madison, p. 152.
55. Ibid., p. 153.
56. Ibid., p. 400.
57. Elliot, 2:483–84.
58. Ibid., p. 475.

S. 1160

IN THE SENATE OF THE UNITED STATES

A BILL

To create a Federal highway corporation for financing the construction of the National System of Interstate Highways;

Union Calendar No. 30

H. R. 2535

IN THE HOUSE OF REPRESENTATIVES

A BILL

To enable the people of Hawaii and Alaska each to form a constitution and State government and to be admitted into the

S. RES. 14

IN THE SENATE OF THE UNITED STATES

RESOLUTION

H. J. RES. 268

IN THE HOUSE OF REPRESENTATIVES

JOINT RESOLUTION

To improve the relations of the United States with Western Germany and Japan.

S. CON. RES. 2

IN THE SENATE OF THE UNITED STATES

CONCURRENT RESOLUTION

H. CON. RES. 75

IN THE HOUSE OF REPRESENTATIVES

CONCURRENT RESOLUTION

S. J. RES. 1

IN THE SENATE OF THE UNITED STATES

JOINT RESOLUTION

H. RES. 151

IN THE HOUSE OF REPRESENTATIVES

RESOLUTION

CHAPTER

THE LEGISLATIVE PROCESS

The Founders looked upon the lawmaking process as a sacred trust. They therefore set up the most elaborate screening procedures ever devised by man. Although more than 20,000 bills and resolutions are introduced in Congress each session, only about 10 percent survive the screening process.

Originally, Congress was supposed to pass bills and spend money only for the GENERAL welfare of the whole country. Gradually, the chains of the Constitution have eroded so that today there are numerous bills for PRIVATE welfare. Consequently, there are two kinds of bills introduced in Congress: (1) public bills which apply to the whole nation, and (2) private bills which apply to individual citizens or groups of people. (We will discuss this in detail when we come to the "general welfare" clause.) Most bills begin by saying:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that. . . . "

Legislative Restraints

The Founders felt there were certain basic restraints on lawmaking:

1. The people cannot delegate to government the power to do anything which would be unlawful for them to do themselves. As John Locke said:

"The legislative . . . is not, nor can possibly be, absolutely arbitrary over the lives and fortune of the people. For it being but the joint power of every member of the society given up to that person or assembly which is legislator, it can be no more than those persons had in a state of Nature before they entered into society, and gave it up to the community. For nobody can transfer to another more power than he has in himself, and nobody has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another."[1]

2. Legislative authority cannot be delegated. Once the people have given the Congress the authority to represent them in making laws, that authority and responsibility become fixed and non-transferable. The Founders often quoted John Locke on this principle as well:

"The legislative cannot transfer the power of making laws to any other hands, for it being but a delegated power from the people, they who have it cannot pass it over to others. The people alone can appoint the form of the commonwealth, which is by constituting the legislative, and appointing in whose hands that shall be. And when the people have said, 'We will submit, and be governed by laws made by such men, and in such forms,' nobody else can say other men shall make laws for them; nor can they be bound by any laws but such as are enacted by those whom they have chosen and authorized to make laws for them."[2]

3. Any statute is inherently null and void if it violates what Jefferson called "the laws of nature and of nature's God." A statement on this theme widely quoted by the Founders was the pronouncement by the great English jurist Sir William Blackstone:

"Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being. . . . And, consequently, as man depends absolutely upon his Maker for everything, it is necessary that he should in all points conform to his Maker's will.

"*This will of his Maker is called the law of Nature.* For as God, when he created matter, and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion; so, when he created man, and endued him with free-will to conduct himself in all parts of life, he laid down certain immutable laws of human nature. . . . These are the eternal, immutable laws of good and evil. . . .

"This law of nature being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: *no human laws are of any validity if contrary to this;* and such of them as are valid derive all their force and all of their authority, mediately or immediately, from this original."[3]

Emphasizing the same point in another place, Blackstone wrote: "Those rights, then, which God and nature have established, and are therefore called natural rights, such as are life and liberty, need not the aid of human laws to be more effectually invested in every man than

they are; neither do they receive any additional strength when declared by the municipal laws to be inviolate. On the contrary, no human legislature has power to abridge or destroy them, unless the owner shall himself commit some act that amounts to a forfeiture."[4]

The Founders were sensitive to all of these basic principles as they wrote their "book of instructions" into the Constitution concerning the legislative process.

4. The law must not be used to destroy equality and justice as it has in the past. Frederic Bastiat once described what has happened:

"The law ... has acted in direct opposition to its own purpose. The law has been used to destroy its own objective: It has been applied to annihilating the justice that it was supposed to maintain; to limiting and destroying rights which its real purpose was to respect. The law has placed the collective force [of government] at the disposal of the unscrupulous who wish, without risk, to exploit the person, liberty, and property of others. It has converted plunder [of property] into a right, in order to protect plunder. And it has converted lawful defense into a crime, in order to punish lawful defense."[5]

Now we return to the text of the Constitution in Article I, section 7.

PROVISION

67

From Article I.7.1

All bills for the raising of revenue shall originate in the House of Representatives.

This provision was originally designed to give the people the RIGHT to have the raising of their taxes under the direct supervision and responsibility of their own representatives.

Of course, since the Seventeenth Amendment was adopted the Senate is also elected by the people, but their term of office is for six years. It was therefore appropriate that money matters should continue to be initiated in the House of Representatives, where there is an accounting to the electorate every two years.

During the discussion of this provision, the Founders responded to the following questions:

• *What was the purpose of providing that all money bills must originate in the House?*

House of Representatives Accountable to the People

Iredell: "The House of Representatives ... will represent the immediate interests of the people. They will originate all money bills, which is one of the greatest securities in any republican government."[6]

Senators (Originally Representing States) Can Be Compelled to Cooperate

Iredell: "The authority over money will

do everything. A government cannot be supported without money. Our representatives may at any time compel the Senate to agree to a reasonable measure, by withholding supplies till the measure is consented to."[7]

The House Was Originally the Only Body Combining Taxation with Representation

Gerry: "Taxation and representation are strongly associated in the minds of the people, and they will not agree that any but their immediate representatives shall meddle with their purses. In short, the acceptance of the plan will inevitably fail, if the Senate be not restrained from originating money bills."[8]

Nicholas: "Any branch of government that depends on the will of another for supplies of money, must be in a state of subordinate dependence, let it have what other powers it may. Our representatives, in this case, will be perfectly independent, being vested with this power fully."[9]

The Original Intent of the Constitution

Madison: "The House of Representatives cannot only refuse, but they alone can propose the supplies requisite for the support of government. They, in a word, hold the purse."[10]

The Supreme Power of the Purse

Madison: "This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure."[11]

- *To whom is the House of Representatives directly accountable?*

House of Representatives Directly Accountable to People

Franklin: "It was always of importance that the people should know who had disposed of their money, and how it had been disposed of. It was a maxim that those who feel can best judge. This end would, he thought, be best attained if money affairs were to be confined to the immediate representatives of the people."[12]

- *Why was the Senate suspect in money matters when it represented the state legislatures?*

Senate Accountability Questioned

Mason: "The consideration which weighed with the committee was that the first branch would be the immediate representatives of the people; the second would not. Should the latter have the power of giving away the people's money, they might soon forget the source from whence they received it. We might soon have an aristocracy."[13]

Senate Much Like an Aristocracy

Mason: "His idea of an aristocracy was that it was the government of the few over the many. An aristocratic body, like the screw in mechanics, working its way by slow degrees, and holding fast whatever it gains, should ever be suspected of an encroaching tendency. The purse strings should never be put into its hands."[14]

Fear of Corruption in the Senate Because of the Smaller Number

Randolph: "The Senate will be more likely to corrupt than the House of Representatives, and should therefore have less to do with money matters."[15]

This Provision Designed to Prevent Senate from Taxing the People

Mason: "By specifying *purposes of revenue*, it obviated the objection that the section extended to all bills under which money might incidentally arise.... The arguments in favor of the proposed restraint on the Senate ought to have the full force. First, the Senate did not represent the *people*, but the *states*, in their political character. It was improper therefore that it should tax the people.... Secondly, nor was it in any respect necessary, in order to cure the evils of our republican system. He admitted that, notwithstanding the superiority of the republican form over every other, it had its evils. The chief ones were the danger of the majority oppressing the minority and the mischievous influence of demagogues.... Again the Senate is not, like the House of Representatives, chosen frequently and obliged to return frequently among the people. They are to be chosen by the states for six years.... In all events, he would contend that the purse strings should be in the hands of the representatives of the people."[16]

PROVISION

68

From Article I.7.1

However, the Senate may propose or concur with amendments on revenue bills as with other legislation.

This provision was designed to give the Senate the RIGHT to amend or reject revenue bills after they had been introduced and approved in the House.

PROVISION

69

From Article I.7.2

Every bill passed by the House and the Senate shall be presented to the President for his review.

This provision gives the President the RIGHT to review all new legislation passed during his administration.

Once a bill is entered in either house it is given a number and assigned to the appropriate committee. Most bills die in committee. If a bill gets a higher priority, the committee holds a hearing and may vote it out for consideration by the whole house or kill it by "tabling" it permanently. If it is voted out for the consideration of the entire house, it is placed on the

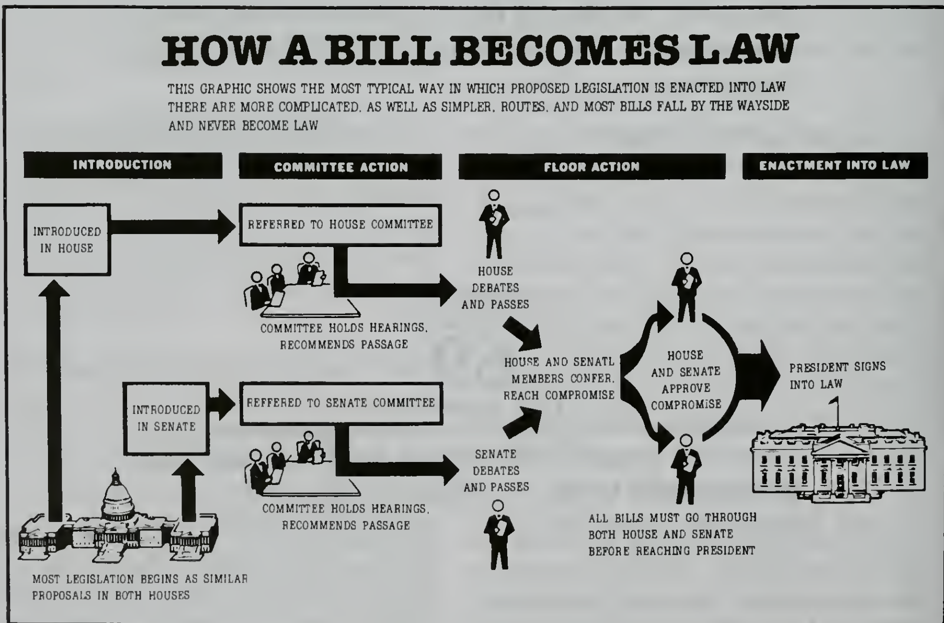
agenda and gets consideration when and if the business of the house can find time for it. If it is approved by one house, it is then sent to the other house. If the other house amends the bill it must be sent back to see if the first house will accept the changes. Often there are numerous conferences and compromises before a consensus is reached. The bill is then considered passed by both houses, and copies are signed by the presiding officer of each body and sent to the President.

PROVISION 70

From Article I.7.2

If the President approves the bill, he shall sign it and it then becomes law at the time indicated in the bill.

This provision gives the President the RIGHT to endorse with his signature those laws which he would like to see adopted.



PROVISION

71

From Article I.7.2

If the President does not approve of a bill, he shall return it, with his objections, to that house from which it originated, and the objections of the President shall be entered in the journal of that house.

This provision gives the President the RIGHT to veto a bill and tell the Congress why he objects to it. Congress shall record his concerns in their official journal.

PROVISION

72

From Article I.7.2

After due consideration of the President's objections, both houses may vote on the bill again. If two-thirds of both the House and the Senate approve the bill, then it shall become law without the President's signature. However, the name and vote of each Senator and Representative shall be entered in the journals of their respective houses.

This provision gives the House and the Senate the RIGHT to review the President's objections. If they agree, they can kill the bill altogether or amend the original bill and send it back to the President. If they do not agree, then it will take a vote of two-thirds in each house to override the President's veto.

PROVISION

73

From Article I.7.2

If a bill has been presented to the President and he does not sign it or return it to Congress for reconsideration within ten days, then it shall automatically become law.

This provision is designed to give the Congress the RIGHT to have their legislation become law in case the President fails to take action either by deliberate intent or by neglect within the prescribed period of ten days.

PROVISION 74

From Article I.7.2

If the Congress presents a bill to the President and then adjourns before he has had ten days to review it, the bill shall not become law unless he signs it.

This provision gives the President the RIGHT to have a bill ten days for review before being required to make a decision on it.

When this amount of time is not available for review, the Congress must take the responsibility and the bill will not become law unless the President signs it. Unsigned bills never become law. It is as though the President had placed them in his pocket and forgotten about them. This is called the President's "pocket veto."

The form in which a bill is signed by the leaders of both houses and by the President, and then deposited with the Department of State, becomes the complete and unimpeachable version in the sight of the courts.

PROVISION 75

From Article I.7.3

Every order, resolution, or vote requiring the concurrence of the Senate and the House of Representatives (except on a question of adjournment) shall be presented to the President of the United States and be approved by him before it takes effect.

This provision is the one clause in the Constitution which is considered to have been inadequately drafted. It was apparently designed to protect the RIGHT of the President to review all resolutions and legislative enactments of the Congress before such legislation or resolutions can take effect. However, there are a number of things besides their mutual adjournment which the Constitution itself excludes from the scrutiny or veto power of the President.

One example would be the amending of the Constitution in Article V. Once an amendment has been approved by the House and the Senate, it goes directly to the states for their consideration and possible ratification.

Another example is the suspension of the President's war powers. These can be suspended by joint resolution of the House and the Senate without the President's approval. This is to avoid the possi-

bility of a President's establishing a military junta such as those which have occurred in other countries.

There are also occasions when the House and the Senate must work out an agreement between themselves on the deployment of funds for their mutual support services. These are achieved without the President's intervention.

Because this provision is considered inconsistent with expressed provisions in other parts of the Constitution, it has been looked upon as a maverick clause and treated accordingly by both the Congress and the White House.

The Founders' Commentary on the American Legislative Invention

The Founders knew that they had developed the most elaborate lawmaking process in history. They had the following comments to make about it:

The Founders Invented a New Legislative Process

Iredell: "The President is of a very different nature from a monarch. He is to be chosen by electors appointed by the people; to be taken from among the people; to hold his office only for the short period of four years; and to be personally responsible for any abuse of the great trust reposed in him.... The executive is not entirely at the mercy of the legislature; nor is it put in the power of the executive entirely to defeat the acts of those two important branches.... If a bare majority of both houses should pass a bill which the President thought injurious to his country, it is in his power...not to say, in an arbitrary, haughty manner, that he does not approve of it — but, if he thinks it a bad bill, respectfully to offer his reasons to both houses; by whom, in that case, it is to be reconsidered, and not to become a law unless two-thirds of both houses shall concur....

"Regard to his duty alone could induce him to oppose, when it was probable two-thirds would at all events overrule him.... It might frequently happen that, where a bare majority had carried a pernicious bill, if there was an authority to suspend it, upon a cool statement of reasons, many of that majority, on a reconsideration, might be convinced, and vote differently.... It serves to protect the executive from ill designs in the legislature; it may also answer the purposes of preventing many laws passing which would be immediately injurious to the people at large. It is a strong guard against abuses in all, that the President's reasons are to be entered at large on the Journals, and, if the bill passes notwithstanding, that the yeas and nays are also to be entered. The public, therefore, can judge fairly between them."[17]

President's Conditional Veto Power Gives Balance to the System

Hamilton: "The propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other departments has been already more than once suggested. The insufficiency of a mere parchment delineation of the boundaries of each has also been remarked upon; and the necessity of furnishing each with constitutional arms for its own defense has been inferred and proved. From these clear and indubitable principles results the propriety of a negative, either absolute or qualified, in the executive upon the acts of the legislative branches. Without the one or the other, the former would be absolutely unable to defend himself against the depredations of the latter. He might gradually be

stripped of his authorities by successive resolutions or annihilated by a single vote. And in the one mode or the other, the legislative and executive powers might speedily come to be blended in the same hands....

"It not only serves as a shield to the executive, but it furnishes an additional security against the enaction of improper laws. It establishes a salutary check upon the legislative body, calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good, which may happen to infuence a majority of that body.... The propriety of the thing does not turn upon the supposition of superior wisdom or virtue in the executive, but upon the supposition that the legislature will not be infallible; that the love of power may sometimes betray it into a disposition to encroach upon the rights of other members of the government; that a spirit of faction may sometimes pervert its deliberations; that impressions of the moment may sometimes hurry it into measures which itself, on maturer reflection, would condemn.

"The primary inducement to conferring the power in question upon the executive is to enable him to defend himself; the secondary one is to increase the chances in favor of the community against the passing of bad laws, through haste, inadvertence, or design.

"The oftener the measure is brought under examination, the greater the diversity in the situations of those who are to examine it, the less must be the danger of those errors which flow from want of due deliberation, or of those missteps which proceed from the contagion of some common passion or interest.

"It is far less probable that culpable views of any kind should infect all the parts of the government at the same moment and in relation to the same object than that they should by turns govern and mislead every one of them.... Those who can properly estimate the mischiefs of that inconstancy and mutability in the laws which form the greatest blemish in the character and genius of our governments.... will consider every institution calculated to restrain the excess of lawmaking, and to keep things in the same state in which they happen to be at any given period, as much more likely to do good than harm; because it is favorable to greater stability in the system of legislation. The injury which may possibly be done by defeating a few good laws will be amply compensated by the advantage of preventing a number of bad ones.

"Nor is this all. The superior weight and influence of the legislative body in a free government and the hazard of the executive in a trial of strength with that body afford a satisfactory security that the negative would generally be employed with great caution; and there would oftener be room for a charge of timidity than of rashness in the exercise of it.... A power of this nature in the executive will often have a silent and unperceived, though forcible, operation. When men, engaged in unjustifiable pursuits, are aware that obstructions may come from a quarter which they cannot control, they will often be restrained by the bare apprehension of opposition from doing what they would with eagerness rush into if no such external impediments were to be feared."[18]

Veto Power to Discourage Demagogues from Passing Bad Laws

Mason: "Notwithstanding the precautions taken in the constitution of the legislature,

it would still so much resemble that of the individual states that it must be expected frequently to pass unjust and pernicious laws. This restraining power was therefore essentially necessary. It would have the effect not only of hindering the final passage of such laws, but would discourage demagogues from attempting to get them passed."[19]

Veto Designed to Check Legislative Injustice and Encroachments

Madison: "The object of the revisionary power is twofold — first, to defend the executive rights; secondly, to prevent popular or factious injustice. It was an important principle in this and in the state constitutions to check legislative injustice and encroachments."[20]

The President Is Guardian Against Legislative Tyranny

G. Morris: "One great object of the executive is to control the legislature. The legislature will continually seek to aggrandize and perpetuate themselves; and will seize those critical moments produced by war, invasion, or convulsion, for that purpose. It is necessary, then, that the executive magistrate should be the guardian of the people, even of the lower classes, against legislative tyranny; against the great and the wealthy, who in the course of things will necessarily compose the legislative body. Wealth tends to corrupt the mind — to nourish its love of power, and to stimulate it to oppression. History proves this to be the spirit of the opulent."[21]

An Editorial Note: How the Legislative Process Works Today

Article I, section 7, sounds fairly simple until a newly elected Congressman gets back to Washington to fulfill his campaign promise to "clean up the mess." No amount of enthusiasm can obscure the fact that the legislative process is a tedious chore and only the iron-willed reformer will survive. Here are a few orientation notes for the newcomer.

1. Bills are usually initiated as a result of suggestions from the executive branch, individual members of Congress, the lobbying efforts of some special interest group, or a media blitz.

2. Bills may sometimes result from the suggestions of individual citizens, just as the Founders intended. For example, in 1861 a minister, the Rev. M. R. Watkinson of Pennsylvania, suggested that the motto "In God we trust" should appear on our national coins as a message of hope during the great war between the states. In 1864 this motto began to appear on some of the coins, and in 1955 Congress required it to appear on all coins.

Each house of Congress has a "legislative counsel" to help write each bill in its proper form. The Library of Congress also provides a Legislative Reference Service to aid in writing bills and tracing the history of any previous legislation or reports dealing with the subject. Many lawyers have also been trained in writing legislation for both state and congressional legislation.

3. A bill is introduced in the House by simply being put into the "hopper," which is a large box on the end of the House clerk's desk. A bill is introduced in the Senate when a Senator is recognized by the chair and presents the title and main subject matter of the bill. In both cases the bill will be assigned a prefix and a number. For example:

- HR-3 is House of Representatives bill number 3.
- H Res-3 is a simple House resolution number 3.
- H J Res-3 is a joint resolution originating in the House.
- H Con Res-3 is a concurrent resolution originating in the House.
- S-3 is Senate bill number 3.
- S Res-3 is Senate resolution number 3.
- S J Res-3 is a joint resolution originating in the Senate.
- S Con Res-3 is a concurrent resolution originating in the Senate.

4. A bill is then assigned to a committee. Prior to 1946 the Speaker of the House could literally bury a bill by assigning it to a committee where he knew it would be "pigeonholed," or purposely forgotten. Today, however, there are rules which designate to a large extent which committee will be assigned the bill. The legislative clerks of each house have the responsibility of assigning bills to their appropriate committees.
5. The life or death of a bill depends almost entirely on what happens to it in the committee. Most Congressmen or Senators try to impress the committee chairman with the importance of a bill by having a large number of colleagues co-sponsor the bill. If the chairman feels so inclined, he will refer the bill to a subcommittee (a smaller number of his major committee) to call witnesses and hold a hearing.

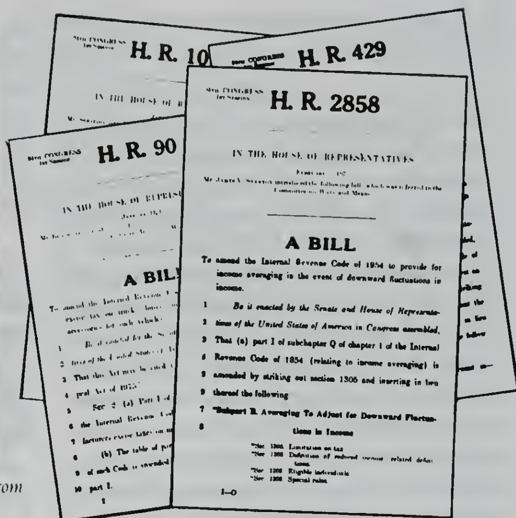
The Hearing

At the hearing both proponents and opponents are heard. Some of these are called because they are "experts" on the subject of the bill. Others appear to present their personal position on the bill. During a hearing much of the work is done by professional lobbyists who provide the research and arguments for or against the bill. These efforts are coordinated through the Congressmen or Senators who are on each side of the debate.

There are approximately 27,000 lobbyists in Washington, most of whom are registered in their professional capacity. However, anyone can lobby for or against a bill. This means talking to Congressmen or Senators and furnishing them with background data in support of a particular position. Many people feel the professional lobbyist is a threat to the democratic process, but Congressmen and Senators soon learn how dependent they become on these motivated researchers to give them a better understanding of both sides of any question. Unfortunately, most Congressmen and Senators have little time to study these briefs themselves, so they rely on trusted staff members to weigh the arguments and prepare speeches which can be read on the floor. Nevertheless, the Congressman or Senator must become fairly well informed on the issue or he will not be able to answer questions during the floor debate.

Sometimes a committee will feel dissatisfied with what the members are being told and decide to go on a "junket" to see for themselves. Very often these so-called junkets come under severe criticism when they take the members of the committee on expensive and seemingly unnecessary excursions which sound more like vacation trips than serious investigative studies.

After a hearing is completed, the committee meets in a closed executive session to examine the bill line by line and carefully mark up any suggested changes. This is called a "markup" meeting. If the committee is favorable to the bill, it will usually be sent out in its original form


H. R. 10

H. R. 429

H. R. 90

A BILL

H. R. 2858

IN THE HOUSE OF REPRESENTATIVES

A BILL

To amend the Internal Revenue Code of 1954 to provide for income averaging in the event of downward fluctuations in income.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) part I of subchapter Q of chapter 1 of the Internal
4 Revenue Code of 1954 (relating to income averaging) is
5 amended by striking out section 1306 and inserting in lieu
6 thereof the following:
7 "Subpart B. Averaging To Adjust for Downward Fluctua-
8 tions in Income

Left: Laws being filed in the Senate. Right: Sample bills from the House of Representatives.

with a favorable recommendation. However, the committee may send out an "amended bill," which reflects many changes made in the committee markup meetings. The committee may even write its own bill covering the same subject, which is then sent out as a "committee bill."

If a majority of the committee is opposed to a bill, it will vote to have it tabled — which means, the bill will be set aside and probably forgotten. Occasionally, however, a committee may oppose a bill but believe the whole house should have the opportunity of discussing and acting on it. It will then report the bill out of committee with an "unfavorable recommendation."

The House has a rule that if a committee has a bill buried for more than thirty days (or seven days in the Rules Committee), it can be "blasted out" of committee by having a simple majority of 218 House members sign a "discharge petition." In the Senate a buried bill can be "blasted out" of a committee by a motion on the floor which is approved by "a majority of those present."

Placed on the Calendar

6. When a bill comes out of committee it is reported to the whole house in one form or another and placed on the House or Senate calendar. The House of Representatives has three main calendars:

- The Union Calendar for appropriation bills.
- The House Calendar for public bills.
- The Private Calendar for private bills which affect individuals or groups of individuals.

The Senate uses just one calendar for its legislative business.

A new Congressman may feel greatly relieved when his favorite bill finally gets on the calendar. Unfortunately, however, the calendar may turn out to be a morgue for his bill. Literally thousands of bills are placed on the calendar, and these would ordinarily be handled in their numerical order, but with so many bills pending, a priority list must necessarily be arranged. This falls under the direction of the powerful Rules Committee. Therefore, the life or death of a bill rests in the hands of

the Rules Committee even when it is on the calendar.

7. The Rules Committee may speed up the consideration of a bill or block it either temporarily or permanently. To gain some idea of the legislative casualty rate, consider the fact that out of the thousands of bills that are placed on the calendar, only a hundred will probably be considered important enough to bring to the floor for debate, and of these hundred, the Rules Committee will give "privileged status" (for immediate consideration) to only about fifty. At this point the Congressman sponsoring a bill is left helpless unless he can get enough support to do one of four things:

- Obtain a "suspension of rule," which requires a two-thirds vote of the House to bring the bill to the floor for debate (without action by the Rules Committee), but it must be debated and voted in its original form. It cannot be amended. This type of action is also limited to the first and third Mondays of each month that the Congress is in session.
- Obtain "unanimous consent," which means moving that the bill be considered immediately and encountering no objection from any member on the floor.
- Obtain a "discharge rule," which requires 218 signatures (out of 435 members of the House). However, this measure can be put into effect only on the second and fourth Mondays of each month that the Congress is in session.
- Get on the "Calendar Wednesday," when the chairmen of the standing committees are allowed to bring to the floor any bills from the House Calendar or the Union Calendar which lack privileged status from the Rules Committee. Unfortunately, the House majority leader often requests that Calendar Wednesday be cancelled for the following week, and this motion is usually carried by unanimous consent or a two-thirds vote.

It will be immediately appreciated that none of these four options is carried out successfully except on very rare occasions.

Because the Rules Committee has the responsibility of managing the flow of legislation to the floor, it can stipulate the conditions under which a particular bill can be considered. Thus, it can limit debate or even rule that the bill cannot be amended. These streamlining procedures are considered essential to keep the legislative business flowing. However, it is obvious that the power of the Rules Committee is subject to abuse where there is an inclination to exercise it.

On the Floor

8. Undoubtedly the most dramatic aspect of the legislative process is the action that unfolds when a bill reaches the floor for debate.

Because the House has 435 members plus several delegates, it has been necessary to take certain steps to expedite the handling of bills on the floor. Here are some major examples:

- The House can resolve itself into a Committee of the Whole. In other words, a temporary presiding officer can take the place of the Speaker, the mace is removed to a lower level, and for all intents and purposes the House is technically not in session. This allows a much less formal discussion of the issues, and only 100 members are required for a quorum.

- The House considers a bill section by section, and amendments can be proposed and voted on. When this process has been completed, the Committee of the Whole adjourns, and the House is called back into session. The work of the Committee is then given formal approval.
- Limiting debate is another device used to expedite the proceedings in the House. Each Representative is given a maximum of one hour to speak on any point unless, by previous unanimous consent, permission is granted to speak longer.
- The rules stipulate that when a member is recognized to speak on a particular bill, the Congressman must stay on the subject or the Speaker of the House can require him to relinquish the floor even though his time is not up.
- At any time during the House debate, a member may "move the previous question." This means he is calling for a vote. If the majority approve, the Speaker allows each side an additional twenty minutes for debate and then the matter is put to a vote.

The Senate Hearing

In the Senate, debate is much less restricted because it involves a smaller number. As a general rule there is no time limit on debate and a member cannot interrupt the debate by trying to "move the previous question" or call for a vote.

Because debate in the Senate is practically unlimited, a minority of Senators who wish to defeat a bill may use the technique known as a "filibuster." This is a series of devices by which the business of the Senate is brought to a virtual standstill. The idea is to force the Senate to compromise or discontinue considering the bill altogether so it can get on with other business.

Filibustering techniques include a demand for roll-call votes on trivial issues and employing other time-consuming points of order. However, the principal device is for a small group of Senators to get control of the floor and talk in tandem for long periods of time. The whole objective is a delaying action.

In 1935, Senator Huey Long of Louisiana held the Senate floor for fifteen hours while he read from the telephone directory, a mail-order catalog, and the newspaper. The longest filibuster on record is that of Senator Strom Thurmond of South Carolina. He held the floor in 1957 for twenty-four hours. In the past, many bills have been defeated or amended as a result of a filibuster. Sometimes, even the threat of a filibuster will defeat a bill.

The Senate has adopted a rule that if a substantial number of Senators can vote to close off debate—called the closure (or cloture) rule—then each Senator is limited to one hour for the rest of the discussion on that particular bill. However, it is astonishing how rarely the closure rule can be successfully invoked.

To the Other House

9. After a bill has been approved by either house, it must go to the other chamber for approval. Frequently there are serious objections or differences, and these must be ironed out in conference until the final version of the bill is mutually acceptable to both houses. Only when an agreed-upon draft of the bill has been approved and signed by both the Speaker of the House and the President of the Senate does it go to the President.

After a bill is passed by Congress, it is sent to the President for his signature.

Action by the President

10. As we have already pointed out, the President can do one of several things:
  - He can sign the bill into law at a ceremony where numerous souvenir pens are used for the principal sponsors and a bundle of group pictures are taken to show posterity.
  - He can ignore it and let it become law after ten days (excluding Sundays) without his signature.
  - He can veto the entire bill. He is not allowed to veto part of it as most state governors can do. If he vetoes, he must return it to the house where it originated with a statement of his objections. To override a presidential veto, both the House and the Senate must reapprove the bill by a vote of at least a two-thirds majority—in other words, an overwhelming majority.
  - In case the Congress passes a number of bills and then adjourns, as it frequently does just before Christmas, the President does not have the prescribed ten days to consider each one. As a result, NONE of these bills will become law without his signature. By putting them in his pocket, so to speak, and forgetting about them, he can cause them to pass into oblivion. This is called a "pocket veto."

When a majority party in Congress are opposed to the President, they sometimes pass a vast number of bills called "social legislation" which should make them popular with the voters back home even though they know the President cannot approve them because of the cost involved. By dumping them on him just before Christmas and adjourning shortly afterwards, they are able to claim at the next election that they passed the bills "to help the people" but the President bombed them. Just one of the little tricks of the trade.

It can be readily seen that except for something like the declaration of war following Pearl Harbor, it requires a tremendous amount of time and energy to shepherd a bill through the legislative process. Three months is just about the record. This is why it pays to elect strong, courageous, and well-qualified individuals to the halls of Congress. And when they really try to do a creditable job, they need to get letters of warm appreciation from their constituents.

1. John Locke, *Second Essay Concerning Civil Government*, Great Books of the Western World, vol. 35 (Chicago: Encyclopaedia Britannica, 1952), p. 56.

2. Ibid., p. 58.

3. William Blackstone, *Commentaries on the Laws of England*, ed. William Carey Jones, 2 vols. (San Francisco: Bancroft-Whitney Company, 1916), 1:54–63.

4. Ibid., p. 93.

5. Frederic Bastiat, *The Law* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1974), p. 9.

6. Elliot, 4:39.

7. Ibid., p. 129.

8. Madison, p. 391.

9. Elliot, 3:17.

10. *Federalist Papers*, No. 58.

11. Ibid.

12. Madison, p. 218.

13. Ibid., p. 217.

14. Ibid., p. 362.

15. Ibid., pp. 393–94.

16. Ibid., pp. 489–90.

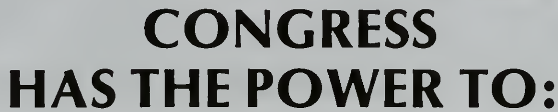
17. Elliot, 4:74–75.

18. *Federalist Papers*, No. 73.

19. Madison, p. 298.

20. Ibid., p. 556.

21. Ibid., p. 282.



CONGRESS HAS THE POWER TO:

1. Tax
2. Spend
3. Borrow
4. Regulate commerce
5. Establish rules for citizenship
6. Establish bankruptcy laws
7. Coin and regulate the value of money
8. Standardize weights and measures
9. Punish counterfeiting
10. Establish a postal system
11. Pass copyright and patent laws
12. Establish federal courts
13. Punish crimes on the high seas
14. Declare war
15. Raise and finance armed forces
16. Establish rules for the armed forces
17. Call up state militias
18. Administer the seat of government
19. Administer federal lands
20. Pass laws to implement the above

CHAPTER

THE POWERS GRANTED TO CONGRESS

In this chapter we begin to see how much the Founders had learned from their bitter experience with the weak constitutional structure of the Articles of Confederation.

In 1787, eleven years after the Declaration of Independence, they sat in solemn contemplation of the powers they were now willing to admit they must relinquish to a central government.

Many of these powers are volatile and dangerous—open to abuse. The Founders therefore tried to incorporate in the Constitution the necessary checks and balances so that if these powers were abused there would be peaceful remedies available to protect the people and preclude the necessity of going to war to regain their rights. This invention is known as the Founders' constitutional system of checks and balances.

Subsequent generations did not follow the Founders' original blueprint with precision, and snags in the fabric of the national mantle of freedom reflect the errors.

It is for this reason that we will begin in this lesson with a careful study of the initial grants of power to the Congress as the Founders originally designed them.

PROVISION 76

From Article I.8.1

The people of the states hereby delegate to the federal Congress the power to collect taxes, duties, imposts, and excises.

This provision delegated to the Congress for the first time the RIGHT to collect general taxes from either the states or the people themselves; also duties (on imports, exports, or manufactured goods); imposts (a tax on imports of various kinds similar to duties); and an excise tax (a federal sales tax).

For all intents and purposes, this was a broad, general taxing power. However, experience had already taught the Founders several things about taxes.

1. An assessment or requisition against each of the states is impossible to enforce without inviting civil war, since the only way to collect the money is by sending in a federal army to coerce the state into paying.
2. It is important to distinguish between direct and indirect taxes. For example, duties, imposts, and excise taxes are taxes on "things," not on states and not on individuals. These are what we call "indirect" taxes, since they can be passed on to the person who is the final purchaser of the goods and thereby pay the tax "indirectly." Indirect taxes are much less painful to collect than direct taxes, since direct taxes are levied directly against individuals and their personal property and cannot be passed on to anyone else.
3. Because the demands of the federal government were expected to be modest, it was felt that the duties on imports would be sufficient to operate the federal government in ordinary times.
4. It was recognized, however, that in case of war or dire emergency it would be necessary to impose direct taxes on individuals and their property. Experience had demonstrated that direct taxes are deeply resented by the people, especially those of considerable wealth who find large quantities of their personal assets being expropriated whereas others will be giving up far less. Direct taxes are always perceived as being unfair to the individual no matter how carefully they are collected.
5. In allocating or apportioning any direct taxes to the various states, the Founders had concluded that these should be based on population rather than wealth, since wealth is too difficult to calculate.

6. The position of the Founders on direct taxes against individuals and their property was set forth in two clauses:

Article I, section 2:
"Direct taxes shall be apportioned among the several states ... according to their respective numbers."

Article I, section 9:
"No capitation [tax of so much per person regardless of circumstances] or other direct tax shall be laid except in proportion to the census or other enumeration herein before directed to be taken."

The two most successful presidents in handling taxes were Thomas Jefferson and Andrew Jackson.

Jefferson was determined to keep the cost of the federal government within the available revenue coming in from imports. He therefore had the prevailing excise taxes repealed, abolished the internal revenue system, and began selling public lands. He was able to pay off half of the enormous Revolutionary War debt in eight years.

Andrew Jackson took a similar position. He sold public lands until he had completely paid off the national debt and had a substantial surplus. He therefore returned $28 million to the states!

The whole issue of taxes went through long and grueling debates during the formation and ratification of the Constitution. During these discussions the Founders responded to the following questions:

• *Why is it virtually impossible to enforce assessments or requisitions against the states?*

Enforcing Requisitions Against the States Invites Civil War

Dawes: "The doctrine of requisitions, or of demands upon a whole state, implies such a power [of the sword]; for surely a whole state, a whole community, can be compelled only by an army; but taxes upon an individual imply only the use of a collector of taxes."[1]

Gore: "The operations of war are sudden, and call for large sums of money; collections from states are at all times slow and uncertain; and, in case of refusal, the non-complying state must be coerced by arms, which, in its consequences, would involve the innocent with the guilty, and introduce all the horrors of a civil war."[2]

R. Livingston: "What have requisitions done? Have they paid off our foreign and domestic debts? Have they supported our civil and small military establishments?... We know that the states which have paid most have not fully complied with the requisitions; some have contributed little, and some nothing."[3]

• *Why is it dangerous for the national government to depend upon requisitions from the states?*

Insurmountable Problems

R. Livingston: "Let us suppose a sudden emergency, in which the ordinary resources are entirely inadequate to the public wants, and see what difficulties present themselves on the gentleman's plan. First, a requisition is to go out to all the states. It is by no means probable that half their legislatures will be in session; perhaps none of them. In the next place, they must be convened solely to consider the requisition. When assembled, some may agree to it; some may totally refuse; others may be dilatory, and contrive plausible

excuses for delay. This is an exact picture of the proceedings on this subject which have taken place for a number of years.

"While these complicated and lingering operations are going on, the crisis may be passed, and the Union may be thrown into embarrassments, or involved in ruin. But immediately on refusal, the amendment proposes compulsion. This supposes that a complete establishment of executive officers must be constantly maintained, and that they will have firmness enough to oppose and set aside the law of the state. Can it be imagined, by any rational man, that the legislature of a state, which has solemnly declared that it will not grant a requisition, will suffer a tax for the same to be immediately levied on its citizens? We are then brought to this dilemma—either the collectors could not be so hardy as to disregard the laws of the states, or an internal war will take place. But, on either of these events, what becomes of the requisition and the tax?"[4]

• *What happens if the requisitions are enforced by military power?*

Militarily Enforced Requisitions Lead to Despotism

Hamilton: "The States ought not to prefer a national Constitution which could only be kept in motion by the instrumentality of a large army continually on foot to execute the ordinary requisitions or decrees of the government.... Such a scheme would...instantly degenerate into a military despotism....

"The principle of legislation for sovereign States supported by military coercion has never been found effectual. It has rarely been attempted to be employed, but against the weaker members; and in most instances attempts to coerce the refractory and disobedient have been the signals of bloody wars in which one half of the Confederacy has displayed its banners against the other half.

"A federal government capable of regulating the common concerns and preserving the general tranquillity...must carry its agency to the persons of the citizens. It must stand in need of no intermediate legislations, but must itself be empowered to employ the arm of the ordinary magistrate to execute its own resolutions. The majesty of the national authority must be manifested through the medium of the courts of justice [rather than by an army]."[5]

• *On the other hand, what happens if resources in the form of taxes or requisitions are not made available to the government?*

Without Taxes the Nation Will Perish

Hamilton: "The federal government ought to possess the power of providing for the support of the national forces.... The jurisdiction of the Union in respect to revenue ... must embrace a provision for the support of the national civil list; for the payment of the national debts contracted, or that may be contracted; and, in general, for all those matters which will call for disbursements out of the national treasury.

"The conclusion is that there must be interwoven in the frame of the government a general power of taxation, in one shape or another.

"Money is, with propriety, considered as the vital principle of the body politic; as that which sustains its life and motion and enables it to perform its most essential functions. A complete power, therefore, to procure a regular and adequate supply of revenue, as far as the resources

of the community will permit, may be regarded as an indispensable ingredient in every constitution. From a deficiency in this particular, one of two evils must ensue: either the people must be subjected to continual plunder, as a substitute for a more eligible mode of supplying the public wants, or the government must sink into a fatal atrophy, and, in a short course of time, perish."[6]

• *What is the biggest problem in determining the government's needs?*

Government Appetite for Money Is Insatiable

Smith: "It is a general maxim, that all governments find a use for as much money as they can raise. Indeed, they have commonly demands for more. Hence it is that all, as far as we are acquainted, are in debt. I take this to be a settled truth, that they will all spend as much as their revenue; that is, will live at least up to their income. Congress will ever exercise their powers to levy as much money as the people can pay. They will not be restrained from direct taxes by the consideration that necessity does not require them."[7]

• *What is the foremost solution?*

The People Should Elect Wise Representatives

Randolph: "Will not the people choose men of integrity, and in similar circumstances with themselves, to represent them? What laws can they make that will not operate on themselves and friends, as well as on the rest of the people? Will the people reelect the same men to repeat oppressive legislation? Will the people commit suicide against themselves, and discard all those maxims and principles of interest and self-preservation which actuate mankind in all their transactions?"[8]

Representatives Also Must Bear These Taxes

Nicholas: "We have the best security we can wish for: if they impose taxes on the people which are oppressive, they subject themselves and their friends to the same inconvenience and to the certainty of never being confided in again."[9]

Sedgwick: "In order to secure the people against the abuse of this power, the representatives and people. . .are equally subject to the laws, and can, therefore, have but one and the same interest; that they would never lay unnecessary burdens, when they themselves must bear a part of them."[10]

Gore: "The Congress of the United States is to be chosen, either mediately or immediately, by the people. They can impose no burdens but what they participate in common with their fellow-citizens."[11]

Johnson: "When I look for responsibility, I fully find it in that paper [the new Constitution]. When the members of the government depend on ourselves for their appointment, and will bear an equal share of the burdens imposed on the people—when their duty is inseparably connected with their interests—I conceive there can be no danger. Will they forfeit the friendship and confidence of their countrymen, and counteract their own interest? As they will probably have families they cannot forget them. When one of them sees that Providence has given him a numerous family, he will be averse to lay taxes on his own posterity. They cannot escape them. They will be as liable to be taxed as any other persons in the community. Neither is he sure that he shall enjoy the place again if he breaks his faith."[12]

• *What should be the main source of federal income in peacetime?*

Import Duties Should Satisfy Government Needs in Peacetime

Wilson: "In this Constitution, a power is given to Congress to collect imposts, which is not given by the present Articles of the Confederation. A very considerable part of the revenue of the United States will arise from that source; it is the easiest, most just, and most productive mode of raising revenue; and it is a safe one, because it is voluntary. No man is obliged to consume more than he pleases, and each buys in proportion only to his consumption. The price of the commodity is blended with the tax, and the person is often not sensible of the payment."[13]

Nicholas: "Money cannot be raised in a more judicious manner than by imposts; it is not felt by the people; ... were they raised by direct taxes, they would be exceedingly oppressive."[14]

Ellsworth: "It is a strong argument in favor of an impost, that the collection of it will interfere less with the internal police of the states than any other species of taxation. It does not fill the country with revenue officers, but is confined to the sea-coast, and is chiefly a water operation. Another weighty reason in favor of this branch of the revenue is, if we do not give it to Congress, the individual states will have it. It will give some states an opportunity of oppressing others, and destroy all harmony between them. If we would have the states friendly to each other, let us take away this bone of contention, and place it, as it ought in justice to be placed, in the hands of the general government."[15]

• *If necessary, what should be the next main source of income?*

Additional Needs Should Be Met by Excise (Federal Sales) Taxes

Wilson: "I apprehend the greatest part of the revenue will arise from external taxation. But certainly it would have been very unwise in the late Convention to have omitted the addition of the other powers; and I think it would be very unwise in the Convention to refuse to adopt this Constitution, because it grants Congress power to lay and collect taxes, for the purpose of providing for the common defense and general welfare of the United States.

"What is to be done to effect these great purposes, if an impost should be found insufficient? Suppose a war was suddenly declared against us by a foreign power, possessed of a formidable navy; our navigation would be laid prostrate, our imposts must cease; and shall our existence as a nation depend upon the peaceful navigation of our seas? A strong exertion of maritime power, on the part of an enemy, might deprive us of these sources of revenue in a few months.... Nor can we agree that our safety should depend altogether upon a revenue arising from commerce.

"Excise may be a necessary mode of taxation; it takes place in most states already."[16]

Excise (Sales) Taxes Would Be Laid Primarily on Luxury Items

R. Livingston: "We may naturally suppose that wines, brandy, spirits, malt liquors, etc., will be among the first subjects of excise. These are proper objects of taxation, not only as they will be very productive, but as charges on them will be favorable to the morals of the citizens."[17]

Gorham: "By impost and excise, the man of luxury will pay; and the middling and

the poor parts of the community, who live by their industry, will go clear; and as this would be the easiest mode of raising a revenue, it was the most natural to suppose it would be resorted to."[18]

Hamilton: "Ardent spirits ... would well bear this rate of duty; and if it should tend to diminish the consumption of it, such an effect would be equally favorable to the agriculture, to the economy, to the morals, and to the health of the society. There is, perhaps, nothing so much a subject of national extravagance as this very article."[19]

• *What happens if excise (sales) taxes become excessive?*

Excessive Excise Taxes Are Self-Defeating

Hamilton: "It is a signal advantage of taxes on articles of consumption that they contain in their own nature a security against excess. They prescribe their own limit, which cannot be exceeded without defeating the end proposed—that is, an extension of the revenue.... If duties are too high, they lessen the consumption; the collection is eluded; and the product to the treasury is not so great as when they are confined within proper and moderate bounds. This forms a complete barrier against any material oppression of the citizens by taxes of this class, and is itself a natural limitation of the power of imposing them."[20]

• *What happens if import duties become excessive?*

Excessive Import Duties Lead to Smuggling

Hamilton: "Exorbitant duties on imported articles would beget a general spirit of smuggling; which is always prejudicial to the fair trader, and eventually to the revenue itself: they tend to render other classes of the community tributary in an improper degree to the manufacturing classes, to whom they give a premature monopoly of the markets; they sometimes force industry out of its more natural channels into others in which it flows with less advantage; and in the last place they oppress the merchant, who is often obliged to pay them himself without any retribution from the consumer.... It is not always possible to raise the price of a commodity in exact proportion to every additional imposition laid upon it. The merchant is ... often under a necessity of keeping prices down in order to make a more expeditious sale."[21]

• *Which taxing powers of the states are concurrent with those of the national government?*

All Taxing Powers Are Concurrent with the States Except Imports

Hamilton: "Congress have but one exclusive right in taxation—that of duties on imports; certainly, then, their other powers are only concurrent."[22]

Ellsworth: "This clause extends to all the objects of taxation. But though it does extend to all, it does not extend to them exclusively. It does not say that Congress shall have all these sources of revenue, and the states none. All, excepting the impost, still lie open to the states. This state owes a debt; it must provide for the payment of it. So do all the other states. This will not escape the attention of Congress. When making calculations to raise a revenue, they will bear this in mind. They will not take away that which is necessary for the states. They are the head, and will take care that the members do not perish."[23]

Parsons: "Congress have only a concurrent right with each state, in laying direct taxes, not an exclusive right; and the right of each state to direct taxation is equally extensive and perfect as the right of Congress; any law, therefore, of the United States, for securing to Congress more than a concurrent right with each state, is usurpation, and void."[24]

Hamilton: "The individual States should possess an independent and uncontrollable authority to raise their own revenues for the supply of their own wants.... I affirm that with the sole exception of duties on imports..., they would, under the plan of the convention, retain that authority in the most absolute and unqualified sense; and that an attempt on the part of the national government to abridge them in the exercise of it would be a violent assumption of power, unwarranted by any article or clause of its Constitution."[25]

Editorial Summary: The Power to Tax

The Declaration of Independence and the Revolutionary War resulted from the imposition of taxes by England without representation. However, once the states were represented in their own constitutional conventions, one of the first things they did was to endow the national government with power to impose taxes.

Under the Articles of Confederation this power to tax had been reserved exclusively to the states, but their scandalous default in properly providing for the "common treasury" of the Confederation almost resulted in the Americans losing the Revolutionary War. By 1787 it was agreed that if the national government were to have the responsibility of defending the nation and maintaining domestic tranquility, it must by all means have the power to tax.

During the Constitutional Convention there was considerable discussion concerning the terms "duties," "imposts," and "excises." Actually, the use of the comprehensive word "taxes" would have been sufficient. The reason for using all of these terms was so that there would be no doubt about the national government's power to collect money by ALL known methods of taxation. "Duties" and "imposts" are taxes levied on imports from abroad, while "excises" are taxes on goods or commodities manufactured or produced at home. The delegates to the convention were perfectly aware of the power they were placing in the hands of the national government. Nevertheless, as Hamilton said, "Money is one of the essential agencies of Government. Without it no Government can exist, and without the power to raise it, it cannot be had."[26]

As we shall see, the terms of the Constitution originally gave Congress complete power to levy taxes—with one exception and two qualifications:

1. Congress cannot impose ANY taxes on goods exported from any state.
2. Direct taxes (on people and their property) must be levied by apportionment among the states according to their respective populations.
3. Indirect taxes (on goods) must be levied uniformly throughout the country.

Other than this, it was originally held that the power of Congress to tax "reached every subject"[27] and "embraces every conceivable power of taxation."[28] Nevertheless, until recently the Supreme Court had ruled that there were certain areas which lay beyond the taxing power of Congress. For example, it was ruled for some time that the salaries of federal judges could not be taxed because of the constitutional mandate that their remu-

neration could not be diminished during their continuance in office, but this was overthrown in 1939.[29] A similar rule that the salary of a state officer could not be taxed by the federal government was overthrown in 1939.[30] Today, even state-owned enterprises can be taxed by the federal government just as though they were enterprises of private citizens.[31]

Not only does Congress have broad powers to levy taxes, but the Supreme Court has allowed the government to acquire several fringe benefits by "regulating" some of the subject matter *selected* for taxation. For example:

1. The federal government has been sustained in regulating the packaging of taxed articles to prevent fraud in the collection of the tax. This has included the packaging of tobacco,[32] and oleomargarine.[33] The court justified these regulations under the clause which authorizes Congress to do anything which is "necessary and proper" to carry out the provisions of its enumerated powers, and collecting taxes is one of them.

2. For the same reason, the Supreme Court has allowed the federal government to impose rigorous restrictions on the manner in which certain things may be sold or transferred and has imposed heavy penalties on persons dealing with these items in any other way. This is the basis for the federal control of the means of dispensing drugs[34] and selling firearms.[35]

3. Congress may tax any activity which is being carried on, even if it is illegal. These are referred to as federal licenses, for which a fee is paid. These "license" taxes have been imposed on gambling equipment and on the accepting of wagers,[36] regardless of whether these are permitted or prohibited by the United States[37] or the particular state.[38] This was the basis for allowing the government to levy a heavy tax on liquor dealers who operated in violation of state laws during the Prohibition era; also on slot machines which have been outlawed by a state.

The power to tax, given to Congress by the Constitution, has been exercised to the point of serious abuse.

4. Federal taxation has even been used to suppress as well as regulate certain articles. This was the case with the imposition of extremely heavy taxes on machine guns initiated during the gangster era. It has been held that where the tax is imposed unconditionally, so that no other purposes appear on the face of that statute, the court has refused to inquire into the motives of the lawmakers and has sustained the tax despite its prohibitive side effects.[39]

PROVISION

77

From Article I.8.1

The people of the states empower the Congress to use the money collected through taxes to pay its debts.

This provision gave the Congress the RIGHT to expend the revenue resulting from taxation in liquidating the nation's lawful debts.

At the time of the Constitutional Convention the Congress was not only saddled with a huge Revolutionary War debt, but in this Constitution it also assumed the war debts of the states.

Therefore, this was a topic for the most profound and serious discussion.

During the debates the Founders grappled with the following questions:

• *What is the connection between a national government and national debts?*

A Central Government Is Designed to Facilitate Payment of the National Debt

Sumner: "In order to know whether such powers are necessary, we ought, sir, to inquire what the design of uniting under one government is. It is that the national dignity may be supported, its safety preserved, and necessary debts paid."[40]

If Congress Can Contract Debts, It Must Have Power to Pay Them

Hartley: "Establish a power which can discharge its engagement, and you insure the confidence and friendship of the world. The power of taxation is then a great and important trust; but we lodge it with our own representatives, and as long as we continue virtuous we shall be safe, for they will not dare to abuse it."[41]

• *What happens to the prestige of the nation when debts are unpaid?*

Other Nations Lose Confidence

McKean: "If they have to borrow money, they are certainly bound, in honor and conscience, to pay the interest, until they pay the principal, as well to the foreign as to the domestic creditor; it therefore becomes our duty to put it in their power to be honest. At present, sir, this is not the case, as experience has fully shown. Congress have solicited and required the several states to make provision for these purposes. Has one state paid its quota? I believe not one of them. And what has been the result? Foreigners have been compelled to advance money to enable us to pay the interest due them on what they furnished to Congress during the late war.... Those who lent us, in our distress, have little encouragement to make advances again to our government; but give the power to Congress to lay such taxes as may be just and necessary, and public credit will revive."[42]

• *Why not assign to each state the responsibility of paying its fair share of the national debt?*

The Debt Cannot Be Apportioned to the States

Hamilton: "The public debt of the Union would be a further cause of collision between the separate States or confederacies.... How would it be possible to agree upon a rule of apportionment satisfactory to all? There is scarcely any that can be proposed which is entirely free from real objections.... There are even dissimilar views among the States as to the general principle of discharging the public debt. Some of them, either less impressed with the importance of national credit, or because their citizens have little, if any, immediate interest in the question, feel an indifference, if not a repugnance, to the payment of the domestic debt at any rate.... The citizens of the States interested would clamor; foreign powers would urge for the satisfaction of their just demands, and the peace of the States would be hazarded to the double contingency of external invasion in internal contention.

"Suppose the difficulties of agreeing upon a rule surmounted and the apportionment made. Still there is great room to suppose that the rule agreed upon would, upon experiment, be found to bear harder upon some States than upon others.... If the rule adopted should in practice justify the equality of its principle, still delinquencies in payment on the part of some of the States would result from a diversity of other causes — the real deficiency of resources; the mismanagement of their finances; accidental disorders in the management of the government; and, in addition to the rest, the reluctance with which men commonly part with money for purposes that have outlived the exigencies which produced them and interfere with the supply of immediate wants. Delinquencies, from whatever causes, would be productive of complaints, recriminations, and quarrels. There is, perhaps, nothing more likely to disturb the tranquillity of nations than their being bound to mutual contributions for any common object that does not yield an equal and coincident benefit. For it is an observation, as true as it is trite, that there is nothing men differ so readily about as the payment of money."[43]

PROVISION

78

From Article I.8.1

The people of the states empower the Congress to spend taxes for the common defense.

This provision gave the Congress the RIGHT to use some of the revenues gained from taxes to provide for the defense of the entire nation.

This is the meaning of "common" defense — defense of the entire nation.

The men who sat at the council tables of the Constitutional Convention were mostly battlefield veterans. They looked upon war as an ignoble monstrosity which should eventually be wiped from the face of the earth. Yet, so long as certain warmongering nations roamed the earth, they felt impelled to keep the peace by providing a secure and powerful defense.

In pondering the implications of these powers, the Founders responded to the following questions:

• *What is the connection between the power to declare war and the power to fund the war?*

Fund-Raising Powers Must Go with War-Making Powers

R. Livingston: "Sir, our reasoning on this ground is conclusive. If it be necessary to trust our defence to the Union, it is necessary that we should trust it with the sword to defend us, and the purse to give the sword effect."[44]

A War for Survival May Require Access to Every Existing Resource

Ellsworth: "It is necessary that the power of the general legislature should extend to all the objects of taxation, that government should be able to command all the resources of the country; because no man can tell what our exigencies may be. Wars have now become rather wars of the purse than of the sword. Government must therefore be able to command the whole power of the purse; otherwise a hostile nation may look into our Constitution, see what resources are in the power of government, and calculate to go a little beyond us; thus they may obtain a decided superiority over us, and reduce us to the utmost distress. A government which can command but half its resources is like a man with but one arm to defend himself."[45]

Must Have the Means and the Power to Provide for the National Defense

Hamilton: "A constitution cannot set bounds to a nation's wants; it ought not, therefore, to set bounds to its resources. Unexpected invasions, long and ruinous wars, may demand all the possible abilities of the country. Shall not your government have power to call these abilities into action? The contingencies of society are not reducible to calculations. They cannot be fixed or bounded, even in imagination. Will you limit the means of your defence, when you cannot ascertain the force or extent of the invasion? Even in ordinary wars, a government is frequently obliged to call for *supplies*, to the temporary oppression of the people."[46]

• *Does "defense" imply the financing of an actual war or the financing of the military in peacetime to prevent a war?*

We Must Be Strong Enough to Discourage Insult

Madison: "Weakness will invite insults. The best way to avoid danger is to be in a capacity to withstand it."[47]

Madison: "Security against foreign danger is...an avowed and essential object of the American Union. The powers requisite for attaining it must be effectually confided to the federal councils."[48]

Hamilton: "The Union ought to be invested with full power to levy troops; to build and equip fleets; and to raise the revenues which will be required for the formation and support of an army and navy."[49]

Hamilton: "There can be no limitation of that authority which is to provide for the defense and protection of the community in any matter essential to its efficacy—that is, in any matter essential to the *formation, direction,* or *support* of the national forces."[50]

We Must Provide the Means for Any Future Contingency

Hamilton: "The objects that will require a federal provision in respect to revenue... are altogether unlimited.... We must bear in mind that we are not to confine our view to the present period, but to look forward to remote futurity. Constitutions of civil government are not to be framed upon a calculation of existing exigencies, but upon a combination of these with the probable exigencies of ages, according to the natural and tried course of human affairs. Nothing, therefore, can be more fallacious than to infer the extent of any power proper to be lodged in the national government from an estimate of its immediate necessities. There ought to be a capacity to provide for future contingencies as they may happen; and as these are illimitable in their nature, it is impossible safely to limit that capacity.... If we mean to be a commercial people, it must form a part of our policy to be able one day to defend that commerce. The support of a navy and of naval wars would involve contingencies that must baffle all the efforts of political arithmetic....

"Let us recollect that peace or war will not always be left to our option; that however moderate or unambitious we may be, we cannot count upon the moderation, or hope to extinguish the ambition of others.... To judge from the history of mankind, we shall be compelled to conclude that the fiery and destructive passions of war reign in the human breast with much more powerful sway than the mild and beneficent sentiments of peace; and that to model our political systems upon speculations of lasting tranquillity is to calculate on the weaker springs of the human character.

"What are the chief sources of expense in every government?... Wars and rebellions; the support of those institutions which are necessary to guard the body politic against these two most mortal diseases of society."[51]

Editorial Summary: National Defense

A free people in a civilized society always tend toward prosperity. In the case of the United States, the trend has been toward a super-abundant prosperity. Only as the federal government has usurped authority and intermeddled with the free-market economy has this surge of prosperity and high production of goods and services been inhibited.

But prosperity in the midst of thriving industry, fruitful farms, beautiful cities, and flourishing commerce always attracts the greedy aspirations of predatory nations. Singly, these covetous predators may not pose a threat, but federated together they may present a spectre of total desolation to a free, prosperous people. Before the nation's inhabitants are aware, their apocalypse of destruction is upon them.

It was the philosophy of the Founders that the kind hand of Providence had been everywhere present in allowing the United States to come forth as the first free people in modern times. They further felt that they would forever be blessed with freedom and prosperity if they remained a virtuous and adequately armed nation.

Franklin's Philosophy of Defense

Clear back in 1747, Benjamin Franklin vividly comprehended the task ahead. Said he:

"Were this Union formed, were we once united, thoroughly armed and disciplined, were everything in our power done for our security, as far as human

means and foresight could provide, we might then, with more propriety, humbly ask the assistance of Heaven and a blessing on our lawful endeavors."[52]

Peace was the goal, but strength was the means. Franklin envisioned the day when a prudent policy of national defense would provide the American people with the protection which their rise to greatness would require. He wrote:

"The very fame of our strength and readiness would be a means of discouraging our enemies; for 'tis a wise and true saying, that 'One sword often keeps another in the scabbard.' The way to secure peace is to be prepared for war. They that are on their guard, and appear ready to receive their adversaries, are in much less danger of being attacked than the supine, secure and negligent."[53]

Franklin further saw that those in authority have the inherent responsibility to initiate the means by which adequate defenses can be provided. He declared:

"Protection is as truly due from the government to the people, as obedience from the people [is due] to the government."[54]

In later life he held to the same solid philosophy of peace through strength as an assurance of survival in the future:

"Our security lies, I think, in our growing strength, both in numbers and wealth; that creates an increasing ability of assisting this nation in its wars, which will make us more respectable, our friendship more valued, and our enmity feared; thence it will soon be thought proper to treat us not with justice only, but with kindness, and thence we may expect in a few years a total change of measures with regard to us; unless, by a neglect of military discipline, we should lose all martial spirit, and our western people become as tame as those in the eastern dominions of Britain [India], when we may expect the same oppressions; for there is much truth in the Italian saying, 'Make yourselves sheep, and the wolves will eat you.'"[55]

Franklin Disgusted with Popular Apathy

Franklin had a low opinion of people who waved the flag of liberty but would do little or nothing to provide the means for defending it. His mindset called for action to back up the words. Writing from England, he declared:

"Our people certainly ought to do more for themselves. It is absurd, the pretending to be lovers of liberty while they grudge paying for the defense of it. It is said here that an impost of five per cent on all goods imported, though a most reasonable proposition, had not been agreed to by all the States, and was therefore frustrated; and that your newspapers acquaint the world with this, with the non-payment of taxes by the people, and with the non-payment of interest to the creditors of the public. The knowledge of these things will hurt our credit."[56]

The Thoughts of George Washington

George Washington is often described as "First in peace, first in war, first in the hearts of his countrymen."

No American occupied a more substantive position, either then or now, to proclaim what he considered to be a necessary posture for the preservation of the nation. He had literally risked "his life, his fortune, and his sacred honor" for the cause of freedom and had performed that task under circumstances which would have smothered the endurance of men with lesser stamina and courage. He fought the Revolutionary War with no

navy of any consequence, no trained professional army of either size or stability, and no outpouring of genuine support from the very states he was striving to save. He could have retired in bitterness after Valley Forge or Morristown, but that was not his character. He did not relish the anguish of it all, but he endured it. To George Washington, it was all part of "structuring a new nation."

As we have pointed out earlier, Washington's position on national defense was in terms of grim realities experienced on the field of battle. No man wanted peace more than he. And no man was willing to risk more in life and property to achieve it. In nearly the same words as Franklin he declared:

"To be prepared for war is one of the most effectual means of preserving peace."[57]

Washington also saw the fallacy of waiting until an attack had occurred before marshalling available resources. He wrote:

"A free people ought not only to be armed, but disciplined; to which end a uniform and well-digested plan is requisite."[58]

Furthermore, Washington saw the fallacy of a policy of interdependence with other nations which made the United States vulnerable in time of war. In his first annual address to Congress, he spoke of the people's general welfare, then stated:

"And their safety and interest require that they should promote such manufactories as tend to render them independent of others for essentials, particularly military supplies."[59]

Washington felt that neither politics nor world circumstances should lure the American people into a posture of complacency. He felt that vigilance was indeed the price of freedom, and unless it was promoted with firmness and consistency the future of the United States would be in jeopardy. In another speech he said:

"The safety of the United States, under Divine protection, ought to rest on the basis of systematic and solid arrangements, exposed as little as possible to the hazards of fortuitous circumstances."[60]

Washington's Fifth Annual Address to Congress

As President, Washington perceived the tendency of Congress to avoid its responsibility to provide adequate defenses. Because the President was personally responsible for the nation's foreign relations, he was well aware that the newborn United States had a long way to

Washington taught that preparation for war was a necessary means of preserving peace. This radar station on Greenland's eastern coast is one of America's Distant Early Warning Line installations in the Arctic.

go to insure decent respect and proper deference from the arrogant European powers. In his fifth annual address to Congress, he said:

"I cannot recommend to your notice measures for the fulfillment of our duties to the rest of the world, without again pressing upon you the necessity of placing ourselves in a condition of complete defense, and of exacting from them the fulfillment of their duties toward us."[61]

Washington could already see the predatory monarchs of Europe planning to slice up the United States and divide it among them unless the people alerted themselves to the exigencies of the day. The British still had their troops stationed along the northern border of U.S. territory. The Spanish had definite aspirations to make a thrust into the Mississippi heartland. From Washington's point of view, not all was well in America's happy valley. Therefore he told the Congress:

"There is a rank due to the United States among nations, which will be withheld, if not absolutely lost, by the reputation of weakness. If we desire to avoid insult, we must be able to repel it; if we desire to secure peace, one of the most powerful instruments of our rising prosperity, it must be known that we are at all times ready for war."[62]

A Duty to the Creator to Preserve Freedom and Our Unalienable Rights

Samuel Adams emphasized the moral responsibility of Americans to preserve the heritage of freedom and unalienable rights with which the Creator had endowed them. Once these blessings have been vouchsafed to a human being, Sam Adams felt it was a wicked and unnatural thing to allow those great fruits of liberty to languish by neglect or apathy. When individuals combine into a society, they bring all of their natural rights with them. Under no circumstances must these be allowed to dwindle away. Said he:

"It is the greatest absurdity to suppose it [would be] in the power of one, or any number of men, at the entering into society, to renounce their essential natural rights, or the means of preserving those rights; when the grand end of civil government, from the very nature of its institution, is for the support, protection, and defense of those very rights; the principal of which . . . are life, liberty, and property. If men, through fear, fraud, or mistake, should in terms renounce or give up any essential natural right, the eternal law of reason and the grand end of society would absolutely vacate such renunciation. The right to freedom being the gift of God Almighty, it is not in the power of man to alienate this gift and voluntarily become a slave."[63]

The American Inheritance

Thus the Founders passed on to their posterity a policy of peace through strength. They were peace-loving, but not pacifists. They called for a rugged kind of strength bolted to a broad base. They saw the foundation for their security in a bustling, prosperous economy with a high standard of public morality; and they saw the necessity for a level of preparedness which would discourage an attack from potential enemies by creating a rate of risk so high that the waging of war against this nation would be an obviously unprofitable undertaking.

As Samuel Adams wrote to a sympathetic friend in England:

"It is the business of America to take care of herself; her situation, as you justly observe, depends upon her own virtue."[64]

PROVISION

79

From Article I.8.1

The people of the states empower the Congress to expend money (for the enumerated purposes listed in Article I, section 8), provided it is done in a way that benefits the general welfare of the whole people.

This provision gave the Congress the RIGHT to expend funds for all of the purposes itemized in Article I, section 8, provided that it was done for the general welfare of all the people and not for individuals or preferred groups.

From the days of the Founders a continuous storm of controversy has gravitated around the proper interpretation of this provision. In the Constitution this provision simply says: "The Congress shall have the power ... to pay the debts and provide for the common defense and general welfare of the United States." However, we have stated the meaning in Principle 79 (above) the way Jefferson and others said it was supposed to be interpreted.

Let us briefly trace the amazing history of this provision.

The Founders' Original Intent

Thomas Jefferson explained that this clause was not a grant of power to "spend" for the general welfare of the people, but was intended to "limit the power of taxation" to matters which provided for the welfare of "the Union" or the welfare of the whole nation. In other words, federal taxes could not be levied for states, counties, cities, or special interest groups.[65]

Madison supported Jefferson's view that this clause restricted the taxing power to matters which provided support for the national government in carrying out its assigned responsibilities.[66]

Here are statements from other Founders, including Alexander Hamilton:

Hamilton: "The welfare of the community [of states] is the only legitimate end for which money can be raised from the community. Congress can be considered as only under one restriction, which does not apply to other governments. They cannot rightfully apply the money they raise to any purpose merely or purely local.... The constitutional *test* of a right application must always be, whether it be for a purpose of *general* or *local* nature."[67]

MacLaine: "Congress will not lay a single tax when it is not to the advantage of the people at large."[68]

Randolph: "The rhetoric of the gentleman has highly colored the dangers of giving the general government an *indefinite* power of providing for the general welfare. I contend that no such power is given."[69]

Here is Hamilton once again emphasizing the same point:

Hamilton: "The United States, in their united or collective capacity, are the OBJECTS to which all general provisions in the Constitution must necessarily be construed to refer."[70]

The New Hamiltonian Doctrine

However, after Hamilton became Secretary of the Treasury, he began to argue that the welfare clause was a general grant of power, and that Congress could spend tax money or even borrow money for a good cause even though it was not included among the enumerated powers, and even though it was for local or special welfare rather than general welfare. Although never formally acknowledged, it has been that view which has prevailed from time to time almost from the beginning. As Edward S. Corwin points out: "From an early date Congress has acted upon the interpretation espoused by Hamilton. Appropriations for subsidies[71] and for an ever increasing variety of 'internal improvements'[72] constructed by the Federal Government, had their beginnings in the administrations of Washington and Jefferson."[73]

Until 1936 the Supreme Court dodged the issue of interpreting the "general welfare" clause by following the Hamiltonian theory but using other provisions in the Constitution to justify its decisions. For example:

1. The power of Congress to appropriate money for the construction of internal improvements such as railroads was upheld on the basis of the commerce clause and the authority to maintain "post roads."[74]
2. The authority to charter and purchase stock in federal land banks was justified on the basis of necessary governmental fiscal operations and war powers.[75]
3. In certain cases the Supreme Court has skirted the whole problem by arrogantly denying the right of either a state or a private citizen to use the courts to challenge the unconstitutional appropriation of national funds.[76]
4. An equally serious aberration of the Constitution appears to have occurred in 1896 when "common defence" and "general welfare" were used to support a holding that the federal government had a right to acquire land within a state for use as a national park.[77] And this in spite of the declaration in clause 17 specifying what territory and for what purposes Congress would have authority to occupy state land: "places purchased by the consent of the legislature of the state in which the same shall be, FOR the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

The Butler Case

Finally, in 1936 the Supreme Court gave its unqualified endorsement to Hamilton's views on the taxing power. Justice Roberts wrote the opinion to settle once and for all whether the Jefferson-Madison interpretation or the Hamilton theory should prevail. He stated: "Madison asserted it [the welfare clause] amounted to no more than a reference to the other powers enumerated in the subsequent clauses of the same section; that, as the United States is a government of limited and enumerated powers, the grant of power to tax and spend for the general national welfare must be confined to the enumerated legislative fields committed to Congress.... Hamilton, on the other hand, maintained the clause confers a power separate and distinct from those later enumerated, is not restricted in meaning by the grant of them, and Congress consequently has a substantive power to tax and to appropriate, limited only by the requirement that it shall be exercised to provide for the general welfare of the United States.... While, therefore, the power to tax is not unlimited, its confines are set in the

clause which confers it, and not in those of Section 8 which bestow and define the legislative powers of Congress."[78]

The obvious contradiction in the concluding sentence defies a rational explanation. The court admitted that this section defines the enumerated powers to which the Congress is restricted and then turns around and uses the words "general welfare" to justify expenditures in ANY field, even though it is not among the enumerated powers.

This decision alone was sufficient to literally destroy the whole concept of limited government, exactly as Jefferson and Madison had predicted. Justice Roberts wanted to be sure that there would be no further ground for argument in favor of the Jefferson-Madison view and therefore stated as a positive judicial mandate that the "general welfare" clause allows Congress "to authorize expenditure of public moneys for public purposes [and] is NOT LIMITED by the direct grants of legislative power found in the Constitution."[79] The only concession the court would make was the fact that the Tenth Amendment would prevent the Congress from invading areas reserved to the states. This modest reservation lasted barely a year when the court overruled itself in the Social Security Act cases.

The Social Security Cases

The Social Security Act cases arose out of the following circumstances:

Some of the states were taxing employers a certain amount to provide unemployment insurance for their workers. The federal government imposed a similar tax and provided that any employer who had paid the federal unemployment tax could deduct it from whatever amount might be due the state. This glaring violation of its own ruling the year before in the Butler case became the law, and the states soon found the federal government preempting significant areas of state tax jurisdiction on the grounds that the "relief of unemployment was a legitimate object of federal expenditure under the 'general welfare' clause."[80] The same reasoning was used to justify the government's collection of funds for old-age retirement and formed the basis for a multitude of other "social service" agencies which soon followed.

Withholding Federal Funds to Force State Compliance

The next landmark case came in 1947 when the Supreme Court sustained the right to make conditional grants-in-aid to states and then withhold federal funds as a means of enforcing its will on a protesting state. In the case of *Oklahoma* v. *Civil Service Commission,*[81] the state objected to the enforcement of a provision of the Hatch Act whereby its right to receive its share of federal highway funds would be diminished in consequence of its failure to remove from office a member of the State Highway Commission found to have taken an active part in party politics while in office. The court said: "While the United States is not concerned with, and has no power to regulate local political activities as such of State officials, it does have power to fix the terms upon which its money allotments to States shall be disbursed." In other words, what the Constitution forbade the federal government to do directly, the government would achieve indirectly by making the allocations of funds to the state dependent upon compliance to the federal will. It was precisely this kind of legal coercion which Madison had warned against in case the general welfare clause was considered a grant of power instead of a limitation on the power to tax.

Madison's Warning

Because the Hamiltonian theory completely wiped out the whole foundation of "limited government" and the concept of "enumerated powers," it is important to turn to the words of James Madison, who captured perhaps better than anyone else the original intent of the "general welfare" clause. Madison delivered a speech on this subject to the first United States Congress:

"If Congress can apply money indefinitely to the general welfare, and are the sole and supreme judges of the general welfare, they may take the care of religion into their own hands; they may take into their own hands the education of children, establishing in like manner schools throughout the Union; they may undertake the regulation of all roads, other than post roads. In short, everything from the highest object of State legislation, down to the most minute object of policy, would be thrown under the power of Congress; for every object I have mentioned would admit the application of money, and might be called, if Congress pleased, provisions for the general welfare."[82]

If the entire concept of a limited government with its delegation of "enumerated powers" is to have meaning as a substantive part of the Constitution, it may require a constitutional amendment to specifically limit the general welfare clause to the enumerated powers of the government. At this late date, there may be no other way to permanently bridle the ursurpation of power by the Supreme Court and Congress. Both have encouraged social-welfare legislation to the point where it had much to do with a leap in the federal budget from six billion in 1936 to six *hundred* billion in 1980.

It should also be pointed out that the Founders were strong believers in promoting the social welfare of the needy, but they insisted that this be supervised on the local or state level. Experience has demonstrated the correctness of their view that, if assigned to the federal level, welfare would become impossible to administer fairly, effectively, or economically.

It should be recognized that the bloating of the general welfare clause to its present proportions of almost limitless usurpation of governmental authority was not achieved without a fight. Constitutionalists in the tradition of the Founders have fought it for nearly two centuries.

Efforts to Hold the Line

President Monroe vetoed a bill for the improvement of the Cumberland Road because he did not believe it could be justified as part of the "general" welfare.

President Jackson took the same position and vetoed every bill for public improvement which was for the benefit of a community or a state rather than the national welfare. He said, "We are in no danger from violations of the Constitution from which encroachments are made upon the personal rights of the citizen.... But against the dangers of unconstitutional acts which, instead of menacing the vengeance of offended authority, proffer local advantages and bring in their train the patronage of government, we are, I fear, not so safe."[83]

River and harbor bills were vetoed by Presidents Tyler, Polk, Pierce, Grant, Arthur, and Cleveland. This demonstrates the anxiety of each Congress almost from generation to generation to expand the powers of Congress beyond the limits which traditional constitutionalists knew were originally intended.

A bill appropriating $19 million was passed over President Arthur's veto in 1882, and a bill which President Cleveland vetoed in 1895 appropriating $80 million was repassed by Congress. President Arthur, fearing that Congress was opening Pandora's box, stated that when the citizens of one state found that the money of all the people was being appropriated for local improvements in another state, they would naturally "seek to indemnify themselves...by securing appropriations for similar improvement." He concluded that "as the bill becomes more objectionable, it secures more support."[84]

President Cleveland said he deplored "the unhappy decadence among our people of genuine love and affection for our Government as the embodiment of the highest and best aspirations of humanity, and NOT as the giver of gifts."[85]

Even as late as 1921, President Harding stated: "Just government is merely the guarantee to the people of the right and opportunity to support themselves. The one outstanding danger of today is the tendency to turn to Washington for the things which are the tasks or the duties of the forty-eight commonwealths."[86]

It will be recalled that the power to spend included the power to pay federal debts. This power was extrapolated into a justification for payments to private citizens as some kind of *moral* claim on the government. Congress soon allowed itself to become deeply involved in appropriating money for the benefit of individuals where it felt a "moral" debt existed.[87]

This brings us to the famous story of Congressman Davy Crockett.

Congressman Davy Crockett

Davy Crockett was killed at the Alamo in 1836 fighting for the independence of Texas. Earlier, however, he had served nine years in Congress. During one of these years a fire broke out in Georgetown, a suburb of Washington, and many of the Congressmen, including Crockett, helped fight the blaze. The next morning the Congress voted $20,000 to assist those whose homes were destroyed. Crockett voted for it. However, when he went home he found himself in deep trouble with one of his constituents named Horatio Bunce. Bunce commended him for the anxiety to help the victims of the fire but scolded him for using other people's money as "charity." He challenged Crockett to find where the Constitution allowed Congress to spend one penny of other people's money for charity. Crockett couldn't think of any such provision. Bunce told him he had a right to help with his own money, but not other people's money.

Crockett returned to Congress and ran into a similar situation. Congress wanted to give a substantial sum to the widow of a distinguished naval officer who had just died. Crockett took the floor and said:

"Mr. Speaker, I have as much...sympathy as ... any man in the House, but ... Congress has no power to appropriate this money as an act of charity. Every member upon this floor knows it. We have the right, as individuals, to give away as much of our own money as we please in charity; but as members of Congress we have no right so to appropriate a dollar of the public money.... Mr. Speaker, I have said we have the right to give as much money of our own as we please. I am the poorest man on this floor. I cannot vote for this bill, but I will give one week's pay to the object, and if every member of Congress will do the same, it will amount to more than the bill asks."

Crockett took his seat. The bill was defeated, but even though some of the Congressmen were very wealthy, not one of them came forward to take up Crockett's offer to donate a week's salary to the widow as a gesture of private charity.[88]

PROVISION 80

From Article I.8.1

The people of the states stipulate that "all duties, imposts and excises shall be uniform throughout the United States."

This provision gave the people the RIGHT not to have discriminatory taxation.

It was stipulated that taxes would be uniform throughout the United States.

The Supreme Court interpreted this provision to mean "geographic uniformity" rather than uniformity of assessment. The tithe (a tenth of one's "increase") is an example of uniformity of assessment because it is the same for rich and poor. However, the rich pay more because 10 percent of their wealth is much greater than 10 percent of the income of the poor.

On the other hand, a graduated income tax violates the principle of uniformity of assessment and violates the principle of equal protection of rights. A graduated income tax makes the income of the wealthy less sacred and less protected than that of the lower income levels.

PROVISION 81

From Article I.8.2

The people of the states hereby empower the Congress to borrow on the credit of the United States.

This provision gives the Congress the RIGHT to borrow on the credit of the United States.

This was another way of saying that the Congress was being authorized to create a national debt.

In 1798, Thomas Jefferson felt that the present clause was a mistake. He felt there was a better way to handle the cost of war or any emergency than by going into debt. His remedy would have been to issue currency, redeemable by a certain date in gold or silver, and then create a tax which would provide the gold or silver by the stipulated date. Jefferson ap-

proved of this device just as it had been advocated earlier by Adam Smith.[89]

Concerning the present clause, Jefferson had this to say:

"I wish it were possible to obtain a single amendment to our Constitution. I would be willing to depend on that alone for the reduction of the administration of our government to the genuine principles of its Constitution; I mean an additional article taking from the federal government the power of borrowing."[90]

Most of the Founders seemed to have recognized that there are two ways to conquer and enslave a nation. One is by the sword and the other is by debt. Only three segments of the population profit from a national debt.

1. The banks are able to profit because they buy the government IOUs (bonds) and thereby put the people under prolonged tribute to pay the interest.
2. Some of the people benefit by receiving a gratuity or getting profits from the government expenditures.
3. The politicians benefit by getting credit for their generosity in spending the borrowed money.

Jefferson wrote extensively against public and private debt throughout his life. Here are some of his most notable statements, and these apply to our own day as much as they did to his.

Freedom from Debt Is a Key to Human Happiness

Jefferson: "The maxim of buying nothing without the money in our pockets to pay for it would make our country one of the happiest on earth. Experience during the war proved this; and I think every man will remember that, under all the privations it obliged him to submit to during that period, he slept sounder and awoke happier than he can do now."[91]

"Never [buy] anything which you have not money in your pocket to pay for. Be assured that it gives much more pain to the mind to be in debt than to do without any article whatever which we may seem to want."[92]

Advice to Youth

"I know nothing more important to inculcate into the minds of young people than the wisdom, the honor, and the blessed comfort of living within their income; to calculate in good time how much less pain will cost them the plainest style of living, which keeps them out of debt, than after a few years of splendor above their income to have their property taken away for debt, when they have a family growing up to maintain and provide for."[93]

Public Debt Should Not Be Passed from One Generation to Another

Jefferson strongly opposed a perennial national debt:

"The question, whether one generation of men has a right to bind another,...is a question of such consequences as not only to merit decision, but place also among the fundamental principles of every government. The course of reflection in which we are immersed here [France] on the elementary principles of society has presented this question to my mind; and that no such obligation can be transmitted, I think very capable of proof. I set out on this ground, which I suppose to be self-evident: that the *earth belongs in usufruct to the living;* that the dead have neither powers nor rights over it.... If [one generation] could charge [another] with a debt, then the earth would belong to the dead and not to the living generation. Then, no generation can contract debts greater than may be paid during the course of its own existence."[94]

A Government Should Cherish Its Credit

"It is a wise rule, and should be fundamental in a government disposed to cherish its credit, and at the same time to restrain the use of it within the limits of its faculties, 'never to borrow a dollar without laying a tax in the same instant for paying the interest annually, and the principal within a given term; and to consider that tax as pledged to the creditors on the public faith.' On such a pledge as this, sacredly observed, a government may always command, on a *reasonable interest,* all the lendable money of their citizens, while the necessity of an equivalent tax is a salutary warning to them and their constituents against oppressions, bankruptcy, and its inevitable consequence, revolution."[95]

Immoral to Saddle Posterity with Our Debts

Further commenting on perennial debt, Jefferson said:

"We shall all consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves; and consequently within what may be deemed the period of a generation, or the life of the majority."[96]

"It is incumbent on every generation to pay its own debts as it goes; a principle which, if acted on, would save one-half the wars of the world."[97]

"The principle of spending money to be paid by posterity, under the name of funding, is but swindling futurity on a large scale."[98]

Public Debt Not a Public Blessing

Jefferson was alarmed that anyone would consider a public debt to be a "blessing." He said:

"As the doctrine is that a public debt is a public blessing, so they [the supporters of state debt assumption] think a perpetual one is a perpetual blessing, and therefore wish to make it so large that we can never pay it off."[99]

"At the time we were funding our national debt, we heard much about 'a public debt being a public blessing'; that the stock representing it was a creation of active capital for the aliment of commerce, manufactures, and agriculture. This paradox was well adapted to the minds of believers in dreams.... If the debt which the banking companies owe be a blessing to anybody, it is to themselves alone, who are realizing a solid interest of 8 or 10 percent on it. As to the public, these companies have banished all our gold and silver medium, which before their institution we had without interest, which never could have perished in our hands, and would have been our salvation now in the hour of war; instead of which they have given us two hundred million of froth and bubble, on which we are to pay them heavy interest until it shall vanish into air.... The truth is that capital may be produced by industry, and accumulated by economy; but jugglers only will propose to create it by legerdemain tricks with paper."[100]

Public Debt a Danger

"I...place economy among the first and most important of republican virtues, and public debt as the greatest of the dangers to be feared."[101]

Discharge of Public Debt Vital to Government's Survival

"I consider the fortunes of our republic as depending, in an eminent degree, on the extinguishment of the public debt before we engage in any war; because, that done, we shall have revenue enough to

improve our country in peace and defend it in war, without recurring either to new taxes or loans. But if the debt should once more be swelled to a formidable size, its entire discharge will be despaired of, and we shall be committed to the English career of debt, corruption, and rottenness, closing with revolution. The discharge of the debt, therefore, is vital to the destinies of our government."[102]

Public Debt Results in Oppressive Taxation

"I am not among those who fear the people. They, and not the rich, are our dependence for continued freedom. And to preserve their independence, we must not let our rulers load us with perpetual debt. We must make our election between *economy and liberty* or *profusion and servitude.* If we run into such debts as that we must be taxed in our meat and in our drink, in our necessaries and our comforts, in our labors and our amusements, for our callings and our creeds, as the people of England are, our people, like them, must come to labor sixteen hours in the twenty-four, [and] give the earnings of fifteen of these to the government for their debts and daily expenses; and the sixteenth being insufficient to afford us bread, we must live, as they now do, on oatmeal and potatoes; have no time to think, no means of calling the mismanagers to account; but be glad to obtain subsistence by hiring ourselves to rivet their chains on the necks of our fellow sufferers.... This example reads to us the salutary lesson that private fortunes are destroyed by public as well as by private extravagance. And this is the tendency of all human governments. A departure from principle in one instance becomes a precedent for a second, that second for a third, and so on, till the bulk of the society is reduced to be mere automatons of misery, to have no sensibilities left but for sinning and suffering. Then begins indeed the *bellum omnium in omnia* which some philosophers, observing [it] to be so general in this world, have mistaken...for the natural instead of the abusive state of man. And the forehorse of this frightful team is public debt. Taxation follows that, and in its train wretchedness and oppression."[103]

Jefferson's Policy as President

As we pointed out earlier, Jefferson followed his own precepts when he became President. His policy was to abolish as many taxes as possible, and by selling public lands he paid off half of the huge Revolutionary War debt in eight years.

Jefferson's policy as President was to abolish as many taxes as possible.

1. Elliot, 2:59.
2. Ibid., p. 67.
3. Ibid., pp. 342–43.
4. Ibid., pp. 343–44.
5. *Federalist Papers,* No. 16.
6. Ibid., No. 30.
7. Elliot, 2:333.
8. Ibid., 3:123–24.
9. Ibid., p. 99.
10. Ibid., 2:96–97.
11. Ibid., p. 65.
12. Ibid., 3:647.
13. Ibid., 2:467.
14. Ibid., 3:99.
15. Ibid., 2:193.
16. Ibid., pp. 501–2.
17. Ibid., p. 341.
18. Ibid., p. 106.
19. *Federalist Papers,* No. 12.
20. Ibid., No. 21.
21. Ibid., No. 35.
22. Elliot, 2:355.
23. Ibid., pp. 90–91.
24. Ibid., p. 93.
25. *Federalist Papers,* No. 32.
26. Thomas James Norton, *The Constitution of the United States: Its Sources and Its Applications* (New York: World Publishing Co., 1922), p. 44.
27. 5 Wall. 462, 471.
28. 240 U.S. 12.
29. 307 U.S. 277.
30. 306 U.S. 466.
31. 326 U.S. 405.
32. 186 U.S. 126.
33. 165 U.S. 526.
34. 249 U.S. 86.
35. 300 U.S. 506.
36. 345 U.S. 22.
37. 256 U.S. 450.
38. 296 U.S. 287, 293.
39. 195 U.S. 27.
40. Elliot, 2:63.
41. *Pennsylvania,* p. 292.
42. Elliot, 2:535.
43. *Federalist Papers,* No. 7.
44. Elliot, 2:386.
45. Ibid., p. 91.
46. Ibid., p. 351.
47. Ibid., 3:309.
48. *Federalist Papers,* No. 41.
49. Ibid., No. 23.
50. Ibid.
51. *Federalist Papers,* No. 34.
52. Smyth, *Writings of Benjamin Franklin,* 2:352.
53. Ibid.
54. Ibid., p. 347.
55. Ibid., 6:3–4.
56. Ibid., 8:645.
57. Fitzpatrick, *The Writings of George Washington,* 30:491.
58. Ibid.
59. Ibid.
60. Ibid., 31:403.
61. Ibid., 33:165.
62. Ibid.
63. Quoted in Wells, *The Life and Public Services of Samuel Adams,* 1:504.
64. Ibid., p. 376.
65. See Bergh, 3:147–49.
66. See *Federalist Papers,* No. 41.
67. Elliot, 4:618.
68. Ibid., p. 189.
69. Ibid., 3:466; emphasis added.
70. *Federalist Papers,* No. 83.
71. 1 Stat. 229.
72. 2 Stat. 356.
73. Norton, *The Constitution of the United States,* p. 145.
74. 127 U.S. 1.
75. 255 U.S. 180.
76. 262 U.S. 447.
77. 160 U.S. 668, 681.
78. 297 U.S. 65, 66.
79. Ibid.
80. 301 U.S. 548.
81. 330 U.S. 127.
82. Thomas James Norton, *Undermining the Constitution: A History of Lawless Government* (New York: Devin-Adair Co., 1950), p. 188.
83. Norton, *The Constitution of the United States,* pp. 45–46.
84. Quoted in ibid., p. 46.
85. Ibid.
86. Ibid.
87. 163 U.S. 427; 323 U.S. 1, 9.
88. Edward S. Ellis, *The Life of Colonel David Crockett...* (Philadelphia: Porter & Coates, 1884), pp. 138–39.
89. See Bergh, 14:224.
90. Ibid., 10:64.
91. Ford, 4:414.
92. *The Family Letters of Thomas Jefferson,* ed. Edwin Morris Betts and James Adam Bear, Jr. (Columbia, Mo.: University of Missouri Press, 1966), p. 43.
93. Ibid., p. 319.
94. Bergh, 7:454.
95. Ibid., 13:269.
96. Ibid., p. 357.
97. Ford, 10:175.
98. Bergh, 15:23.
99. Ford, 5:505.
100. Bergh, 13:420.
101. Ibid., 15:47.
102. Ibid., 12:324.
103. Ibid., 15:39.

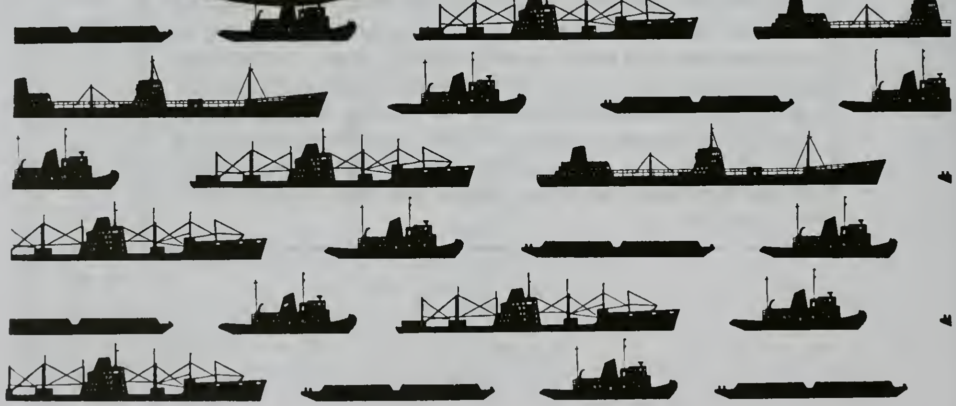
U.S. National Debt: 1791 to 2006

Year	Debt	Year	Debt	Year	Debt
2006	8,366,862,634,494				
2005	7,932,709,661,723	1985	1,945,941,616,459	1885	1,863,964,873
2004	7,379,052,696,330	1980	930,210,000,000 *	1880	2,120,415,370
2003	6,783,231,062,743	1975	576,649,000,000 *	1875	2,232,284,531
2002	6,228,235,965,597	1970	389,158,403,690	1870	2,480,672,427
2001	5,807,463,412,200	1965	320,904,110,042	1865	2,680,647,869
2000	5,674,178,209,886	1960	290,216,815,241	1860	64,842,287
1999	5,656,270,901,615	1955	280,768,553,188	1855	35,586,956
1998	5,526,193,008,897	1950	257,357,352,351	1850	63,452,773
1997	5,413,146,011,397	1945	258,682,187,409	1845	15,925,303
1996	5,224,810,939,135	1940	42,967,531,037	1840	3,573,343
1995	4,973,982,900,709	1935	28,700,892,624	1835	33,733
1994	4,692,749,910,013	1930	16,185,309,831	1830	48,565,406
1993	4,411,488,883,139	1925	20,516,193,887	1825	83,788,432
1992	4,064,620,655,521	1920	25,952,456,406	1820	91,015,566
1991	3,665,303,351,697	1915	3,058,136,873	1815	99,833,660
				1810	53,173,217
1990	3,233,313,451,777	1910	2,652,665,838		
1989	2,857,430,960,187	1905	2,274,615,063	1805	82,312,150
1988	2,602,337,712,041	1900	2,136,961,091	1800	82,976,294
1987	2,350,276,890,953	1895	1,676,120,983	1795	80,747,587
1986	2,125,302,616,658	1890	1,552,140,204	1791	75,463,476

* Rounded to Millions

(Source: Bureau of the Public Debt - United States Department of the Treasury; www.publicdebt.treas.gov/opd/opd.htm)

Debt Update. New all time high records have been set for deficit spending during the spring of 2006. Congress has increased the debt ceiling to NINE Trillion dollars. All things considered the burden of debt for every man, woman and child in the country has risen to over $100,000 each. Our nation is overspending at a rate of about $2 billion per day. During the first half of 2005, Americans got poorer at the rate of $80 million per HOUR. Headlines of 2005 offered the remarkable information that China - a Third World nation - lends the United States $300 billion per year. Vice President, Dick Cheney has reminded us that: "Deficits don't matter." United States citizens seem to regard thrift as a mental disorder and not a virtue. In the private sector during 2005, for every $19 Americans earned, they spent $20. If a thinking person will look at it, the absurdity becomes glaring. America has become an "empire of debt" and is sowing the seeds of her own destruction. (Empire of Debt, The Rise of an Epic Financial Crisis, Bill Bonner and Addison Wiggin, John Wiley & Sons, 2006).



CHAPTER

COMMERCE, NATURALIZATION, AND BANKRUPTCY

This chapter includes three areas of vital concern to the Founders. The Southern states stoutly resisted the federal regulation of commerce, fearing the textile states of New England would interfere with their very profitable commerce with the textile mills of England and Europe. However, they finally agreed to the federal regulation of commerce, both foreign and domestic, as well as with the Indians. Unfortunately, the "commerce clause" developed an amazing elasticity, becoming the most expansive economic source of power in the entire structure of the federal government.

Related to commerce were two other critical issues: immigration and bankruptcy. This chapter gives a somewhat comprehensive treatment of the requirements for naturalization and the way citizenship can be lost. It also covers the basic elements of the bank-

ruptcy law, which has baffled legislators and is still not structured in a satisfactory manner. It remains one of the primary challenges in the field of law and justice.

PROVISION 82

From Article I.8.3

The people of the states empower the Congress to regulate commerce with foreign nations.

This provision gives the Congress the RIGHT to represent the people of the United States in regulating commerce with other nations.

This is an exclusive and sovereign power with nothing reserved to the states. In a technical sense this authority did not have to be granted by the states because it came automatically as a plenary power with the creation of a national government. In other words, it is a power inherent in any sovereign government to deal with foreign nations.

In 1807–8 President Thomas Jefferson cut off all trade with Europe. This was attacked on the ground that federal regulation must always be to "preserve" commerce, not destroy it. The Supreme Court held that this power is all-inclusive, and the Congress may decide when it is in the public interest to have the President terminate certain foreign commerce.

Can the federal government fix arbitrary tariffs on imports? The court held that Congress may determine what articles may be imported into this country and the terms by which importation is permitted. The taxing power also embraces the power to lay duties, which is what a tariff is.

Can certain articles be banned from entering the United States? This power has been exercised ever since 1843, when Congress banned the importation of obscene literature. In 1848 Congress set up an inspection service to ban the importation of spurious or adulterated drugs, as well as adulterated food and liquor. A similar ban was placed on the importation of opium, lottery tickets, and diseased cattle.

PROVISION 83

From Article I.8.3

The people of the states empower the Congress to regulate commerce between the states.

This provision gives the Congress the RIGHT to create a common market of free trade between all of the states and regulate interstate commerce of all kinds.

Historical Background of This Provision

By the time the Constitutional Convention was held in 1787 it was clear to many of the delegates that unless the regulation of interstate commerce was placed in the hands of the national government, the states would wreck the union with their petty regulations designed to promote local prosperity at the expense of the general welfare.

Virginia was one of the principal offenders in this respect. While the Constitution was up before the convention of the various states for ratification, Washington wrote to Lafayette that his own state had recently tried to pass "some of the most extravagant and preposterous edicts on the subject of trade" that had ever been written.[1]

But the other states were also gouging their neighbors with discriminatory regulations of commerce. Rhode Island, for example, met all of her expenses out of duties levied at one port where commerce had to enter from other states. New York also demanded oppressive duties on all imports coming through her major shipping channels. It was apparent that if the regulation of commerce were left to the states they would soon degenerate into isolated economic fiefs with each one using discriminatory and retaliatory regulations against surrounding states.

James Monroe of Virginia (while serving in Congress from 1783 to 1786) had unsuccessfully tried to include the federal regulation of commerce in the Articles of Confederation. He is also credited with suggesting it for the Constitution. Madison felt it was "necessary to preserve the Union," for "without it, it (the Union) will infallibly crumble to pieces."[2]

The commerce clause has consistently served as a barrier to the suppressive efforts of individual states to favor their own industry or economy. In more than 2,500 cases which have been brought before the state and federal courts, tax laws, license laws, and regulations of an infinite variety enacted by state legislatures have been held invalid as interfering with the free flow of interstate commerce.

The United States was the pioneer in discovering the advantages which the free flow of commerce among its several states contributed to national economic prosperity. Australia followed the opposite policy until 1900, when she conceded that provincial or state barriers to commerce were repressive. Brazil, Canada, and other nations with modern constitutions have generally followed the American Constitution in this respect.

Founders' Original Emphasis Was on "Commerce" Rather Than "Regulation"

In the beginning the emphasis was on "commerce" rather than "regulate." As a result, most of the early court cases deal with restrictions against the states in their attempt to interfere with interstate commerce in order to gain some special advantage. Even some recent cases have had to reemphasize this doctrine. For example, a state tried to prohibit pipeline companies from transporting oil and gas outside its own state boundaries.

Defining "Commerce"

The word *commerce* has been interpreted by the Supreme Court to cover "every species of movement of persons or things," *whether for profit or not;* every species of communications, every species of transmission of intelligence, whether for commercial purposes or otherwise; every species of commercial negotiation which, as shown "by the established course of

the business," will involve sooner or later an act of transportation of persons or things, or the flow of services or power across state lines.[3]

Shifting to an Emphasis on "Regulation"

How extensive is the regulatory power of the federal government over interstate commerce? The Supreme Court has held that it covers all of the *instruments of interstate commerce* — navigable rivers, interstate highways, interstate railroads, pipelines, transmission lines, radio waves, telephone lines, and telegraph wires. Just as the word *commerce* has been interpreted to include every species of persons or things, so the "instruments" of commerce have been defined as including any mode whatever by which persons, things, or communications are carried interstate.

To what extent can the federal government "regulate" commerce coming under its jurisdiction?

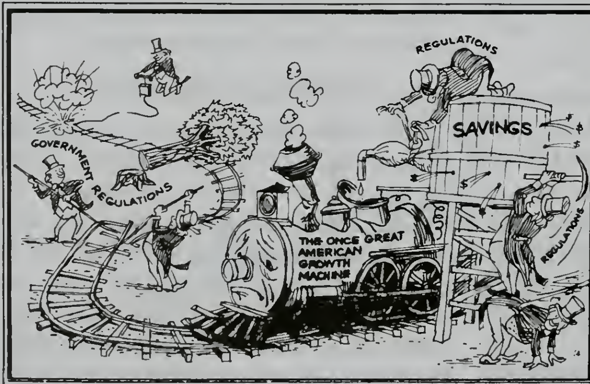
According to Supreme Court rulings, the government is empowered to adopt measures which will protect, foster, control, constrain, or prohibit commerce for the welfare of the public so long as the "due process" clause of the Fifth Amendment is not violated.[4]

Streambeds belong to the respective states, but the navigable waters are exclusively under federal control. The government has powers as broad as the needs of commerce may warrant. It includes flood protection and watershed development; and it has even been held that the government can use the water to develop power and sell it to help recover the costs of improvements. If a waterway is not naturally navigable until dams are built and improvements made, the federal government can erect a dam and thereafter has authority to regulate the dam, reservoir, and resulting waterway as though it had always been navigable.[5]

The government has the power to establish and regulate interstate highway systems. It need not build these highways directly but may charter private corporations to do it, and these corporations can be vested with the power of eminent domain to secure the necessary land for the building of such highways. The government may also exempt these federal franchises from state taxation (since otherwise the states could use taxes to destroy or inhibit these projects).

Regulation of Railroads

In 1866 Congress gave authority for all railroads operated by steam to be joined together in a single system. At first the courts upheld the authority of the states



American economic growth has been severely hampered by governmental regulation.

to supervise the lines within their jurisdiction, but as a result of the panic of 1873 and 1885, hundreds of the small railroads went into bankruptcy and were consolidated into vast interstate systems. Since the states thereby lost their jurisdiction over the railroads, it passed to the federal government, which responded to widespread public demand and passed the Interstate Commerce Act in 1887. This legislation authorized a commission of five men to pass upon the "reasonableness" of the rates charged by railroads for the transportation of goods or persons. By 1910 the Congress had not only authorized the Interstate Commerce Commission to rule on what would be reasonable rates when a complaint was made, but to take the initiative and determine maximum "reasonable" rates whether a complaint had been filed or not.

Regulating All Transportation

The transportation acts of 1920 and 1940 authorized the regulating of all national transportation systems, whether by motor, railroad, or water carrier. The government regulates the issuance of securities by these interstate companies and determines the acceptability of proposed plans to consolidate existing companies or charter new ones. It controls the extent of the service required by each carrier and determines what steps may be taken to meet competition. This control has been exercised with such a heavy hand that practically every major railroad line has been "regulated into bankruptcy."

Canada found that by giving the railroads more opportunity to regulate themselves, they became more efficient and more competitive. Japan runs a government railroad but makes it compete with private roads. They are among the most efficient, comfortable, and safe railroads in the world. Total nationalization of railroads has proven disastrous in England and elsewhere.

All Interstate Transportation and Communication

Gradually, all other means of interstate transportation and communication have been brought under federal regulations.

In 1914 the Supreme Court ruled that the government has exclusive regulatory power over interstate gas and oil pipelines, even though the pipeline is used exclusively in transporting the products of the pipeline owner. In 1927 the court held that the government has exclusive regulatory authority over interstate electric transmission lines, and can regulate the price of such electricity. In 1935 Congress created the Federal Power Commission to govern the pricing and regulating of all wholesale distribution of electricity among the states.

In 1938 the commission was authorized to set the prices on gas originating in one state but transported to another for wholesale distribution.

In 1934 the Federal Communications Commission was set up to license and regulate all interstate and foreign communication by wire and radio. This commission proved to be extremely susceptible to political pressure and eventually used its so-called "Fairness Doctrine" to virtually wipe out any educational programs designed to alert the public to subversion or corruption in government. Whenever a station allowed charges against persons or organizations to go over the air, that station was required to give the accused equal time, free of charge, to answer. Obviously stations promptly eliminated all such programs to avoid a serious loss of revenue. During certain administrations the FCC has also proved extremely biased on religious, racial, and political issues

which ran counter to current government programs or policies. This led to a gradual deregulation of the FCC to make its policies more acceptable to the public.

In 1938 the Civil Aeronautics Act was passed, under which the Federal Aviation Agency and the Civil Aeronautics Board were set up to regulate all phases of airborne commerce, foreign and interstate. For various reasons, this government program was also reduced in authority and eventually eliminated by 1985.

Is bigness dangerous? During the gigantic expansion of industry following the War Between the States, major industries began setting up trusts which absorbed competitors and numerous subsidiary industrial operations. Temporary monopolies began to develop as companies such as Standard Oil successfully attracted over 90 percent of the market.

However, instead of allowing the market to solve the problem, government officials persuaded themselves that these growing monopolies of gigantic size were a permanent fixture which must be broken up. In 1890 the Sherman Anti-Trust Act was passed, which outlawed any combination in the form of a trust or otherwise that operated "in restraint of trade or commerce among the several states, or with foreign nations."

Many of the "big" companies were forced to dismantle their trusts, including Standard Oil. However, since that time many of the fragmented parts of these original trusts have become larger than the parent company, and economists have gradually begun to realize that "bigness" is not dangerous so long as there is an open market in which others can compete. In the field of automobiles, steel, utilities, electronics, and high technology, bigness is an advantage to both the public and the industry.

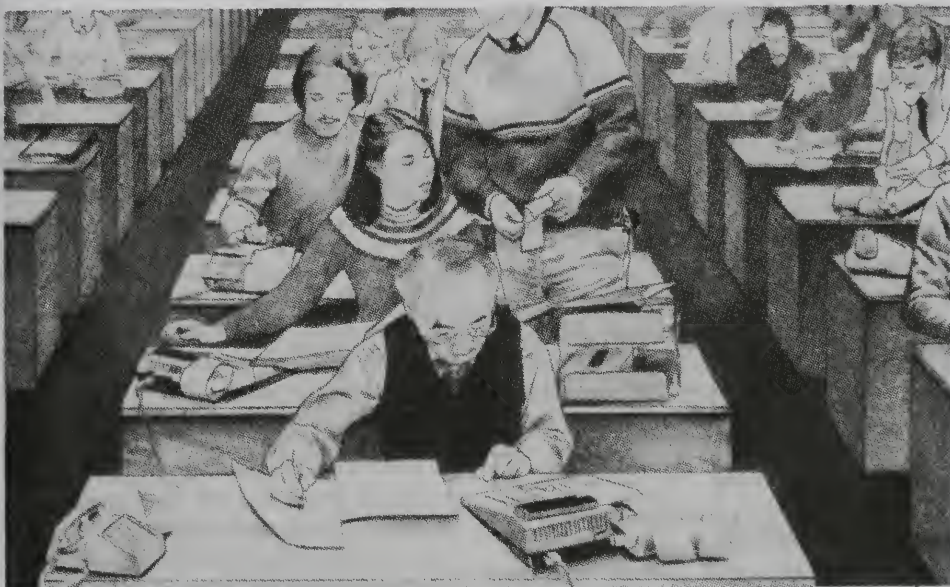
Labor Regulations

To what extent can the federal government regulate or protect the labor force engaged in interstate commerce?

In 1893 Congress passed the Safety Appliance Act which covered all cars and locomotives engaged in moving interstate traffic. In 1903 this act was extended to include all *equipment* of railways engaged in interstate commerce, whether the particular equipment was used for interstate commerce or not. These acts of Congress set the tone for the introduction of legislation dealing with the safety and wellbeing of the labor force engaged in interstate commerce.

In 1907 Congress passed the Hours of Service Act requiring, as a safety measure, that a carrier engaged in moving of interstate or foreign commerce not work for longer periods than those prescribed in the act. The Supreme Court said: "The length of hours of service has a direct relation to the efficiency of the human agencies upon which protection of life and property necessarily depends."[6]

In 1906 and 1908 Congress passed the most notable of these various safety measures in the form of the Federal Employers' Liability Acts. In the past the state courts had handled all injury cases on the basis of employer-employee contracts made between parties within the state. Congress now asserted federal authority over all injury cases occurring to members of the labor force engaged in interstate commerce. These employees were treated as "instruments" or "agents" of commerce coming under the jurisdiction of the federal government, a thesis which the Supreme Court upheld. The Congress went on to amend these acts until jurisdiction was exerted over the local manufacture, servicing, and repair of anything relating to interstate commerce.



The government has reached its long arm farther and farther into the work place, prescribing everything from work conditions to minimum wages.

In 1935 the National Labor Relations Act was passed, giving the government jurisdiction over strikes and the basis of complaints leading to such strikes when they directly affect the commerce of the nation. This act has been expanded by amendment and judicial interpretation to dominate the entire field of labor relations.

In 1938 Congress passed the Fair Labor Standards Act, giving the government power to prescribe wages, hours, and working conditions.

Price Regulations

To what extent can the federal government regulate prices of products flowing in interstate commerce?

The Interstate Commerce Commission has engaged in fixing the rates for railroads, interstate bus lines, and waterway shipping companies. However, this proved so counterproductive that many of these areas are being deregulated.

The Agricultural Marketing Agreement Act authorizes the government to fix minimal prices on certain products flowing through interstate commerce, such as milk.

The federal government has fixed prices on gas and oil. Deregulation of oil in 1981 permitted prices to be substantially reduced as a result of competition in the market.

The federal government fixes prices on electricity.

The federal government has fixed prices on interstate telephone and telegraph lines as well as radio and television transmission.

Beginning in recent years the federal government began deregulating interstate trucks, airlines, and telephone lines. The results were so positive that deregulation in other areas of commerce is contemplated. The Founders would applaud this trend.

Abuse of the Commerce Clause

A number of theories have emerged from the ongoing debate over the unconstitutional abuse of the commerce clause to permit the federal government to invade states' rights. Many of the arguments are based on varied interpretations of the "general welfare" clause.

As we mentioned earlier, two theories of government have competed with each other since the days when Hamilton and Madison disagreed over the meaning of the general welfare clause. It will be recalled that Hamilton argued that this clause gave the federal government unlimited power to do anything which was for the general welfare. Madison argued that the clause was a restriction on the federal government's taxation power, and it could levy funds only for the purpose of carrying out its *enumerated* powers for the general welfare.

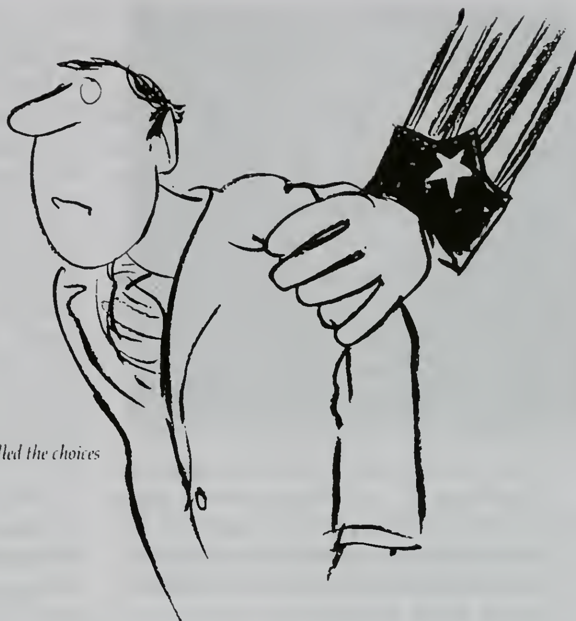
The same argument extended over to the interpretation of the commerce clause. One side, such as Chief Justice Roger Taney, argued that there are two mutually exclusive spheres of power (the federal and the state). The other side argued that the federal authority over commerce is plenary (full and complete) and that it can therefore impose federal regulations on any aspect of commerce. Each side has supported its position with theories and principles which have been called "doctrines." However, each side has ignored or overthrown the doctrines of the other when it happened to be in power. It is therefore essential to understand the doctrines used in supporting various decisions on both sides.

Doctrines relating to the protection of the states' sphere of power were set forth by the Supreme Court in the Sugar Trust Case.[7] The court's decision stated:

1. Production is always local, and under the exclusive domain of the states.
2. Commerce among the states (interstate commerce) does not begin until goods commence their final movement from their state of origin to that of their destination.
3. The sale of any product is merely an incident of its production and is therefore under the domain of the state because its effect on interstate commerce is merely *incidental.*
4. Combinations or associations organized for the sale and distribution of goods are under the regulatory power of the state since the effect on interstate commerce is *indirect,* not direct.

As Justice George Sutherland pointed out in *Carter* v. *Carter Coal Co.:*

"Much stress is put upon the evils which come from the struggle between employers and employees over matters of wages, working conditions, the right of collective bargaining, etc., and the resulting strikes, curtailment and irregularity of production, and the effect on prices; and it is insisted that interstate commerce is greatly affected thereby. But... the conclusive answer is that the evils are all local evils over which the Federal Government has no legislative control. The relation of employer and employee is a local relation. As a common law it is one of the domestic relations. The wages are paid for the doing of local work. Working conditions are obviously local conditions. The employees are not engaged in or about commerce, but exclusively in producing a commodity.... Such effect as they may have upon commerce, however extensive it may be, is secondary and indirect."[8]



Over the years, Uncle Sam has increasingly controlled the choices of America's businessman.

Unconstitutional Doctrines Dominate Today

Contrary doctrines supporting the completely dominant role of the federal government in regulating the entire field of commerce have been as follows:

1. Anything affecting the "current of commerce" from manufacturing to distribution is under federal authority.
2. Commerce includes all aspects of selling, trading, and trafficking, as well as interstate transportation. Therefore, the federal authority extends to every aspect of commercial activity connected with interstate commerce.
3. The federal government can regulate any activity which affects interstate commerce either directly or indirectly. It can therefore fix prices, wages, working conditions, health conditions, and the retirement of employees.
4. All interstate industries automatically come under federal authority for the purpose of intervening in strikes and labor relations. As the Supreme Court said: "When industries organize themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities, how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter when it is necessary to protect interstate commerce from the paralyzing consequences of industrial war?"[9] This now includes all major industries in the country.

Loss of States' Rights

The second set of doctrines (set forth above) has been the basis for the wiping out of traditional states' rights in the field of commerce and giving almost exclusive centralized authority over American business life to the national government. Not only has it virtually destroyed the concept of "separate spheres of power" but also

the concept of a "limited" federal government. In many areas it has destroyed the element of genuine competition and the determination of prices by the law of supply and demand. To appreciate the lengths to which collectivization has been taken, we mention the following examples:

1. In the famous Shreveport case, the government imposed rates and other regulations on railroads which were operating entirely within a state (and shipping freight much more cheaply than the federally regulated railroads).[10]
2. The federal government took over the regulation of waterways which begin and end inside a particular state on the ground that commerce intended for interstate shipment was being transported on these waterways.
3. The federal regulation of employees working exclusively in local railroad yards has been upheld by the Supreme Court.
4. Federal regulations governing employees working on the manufacture and repair of railroad equipment (to be used in interstate commerce) was held to be part of the current of commerce.
5. Federal labor relations have been held to be applicable to a local auto dealer on the ground that he was an integral part of the national distribution system.[11]
6. The Fair Labor Standards Act (which the Supreme Court has sustained) was designed "to place the whole matter of wages and hours of persons employed throughout the United States, with slight exceptions, under a single federal regulatory scheme and in this way completely supersede state exercise of police power in this field."[12]
7. The federal government amended the Agricultural Adjustment Act in 1941 to regulate production even when the goods are not intended for commerce but are to be entirely consumed on the producer's farm. Farmers have been confined in jail for violating provisions of this act.

It is important to appreciate that every single federal regulation was designed to provide "fairness," "reasonable prices," "safety," "competition," "higher standards," etc. Unfortunately, a century of experimentation in governmental intervention to achieve these seemingly desirable goals, has, more often than not, had the opposite effect.

The very fact that deregulated industries are thriving and serving the public more efficiently and at lower prices than before is a solid economic fact which both government and the public are noting. The trend is increasingly toward deregulation. Slowly, we are returning like prodigals to the tenets of Adam Smith and the Founding Fathers.

Views expressed by the Founders illustrate their original intention in giving Congress the power to regulate interstate commerce:

U.S. Should Be a National Common Market with No State Assessing Duties on Export or Import Trade with Other States

Madison: "The defect of power in the existing Confederacy to regulate the commerce between its several members is in the number of those which have been clearly pointed out by experience.... Without this supplemental provision, the great and essential power of regulating foreign commerce would have been incomplete and ineffectual. A very material object of this power was the relief of the States which import and export through other States from the improper contribu-

tions levied on them by the latter. Were these at liberty to regulate the trade between State and State, it must be foreseen that ways would be found out to load the articles of import and export, during the passage through their jurisdiction, with duties which would fall on the makers of the latter and the consumers of the former.... It would nourish unceasing animosities, and not improbably terminate in serious interruptions of the public tranquillity.... The desire of the commercial States to collect, in any form, an indirect revenue from their uncommercial neighbors must appear not less impolitic than it is unfair."[13]

Alexander Hamilton advocated a national common market, which would benefit all.

A National Common Market Will Prevent Certain States from Putting Neighboring States Under Tribute

Hamilton: "Competitions of commerce would be another fruitful source of contention. The States less favorably circumstanced would be desirous of escaping from the disadvantages of local situation, and of sharing in the advantages of their more fortunate neighbors. Each State, or separate confederacy, would pursue a system of commercial policy peculiar to itself. This would occasion distinctions, preferences, and exclusions, which would beget discontent.... The spirit of enterprise, which characterizes the commercial part of America, has left no occasion of displaying itself unimproved. It is not at all probable that this unbridled spirit would pay much respect to those regulations of trade by which particular States might endeavor to secure exclusive benefits to their own citizens. The infractions of these regulations, on one side, the efforts to prevent and repel them, on the other, would naturally lead to outrages, and these to reprisals and wars.

"The opportunities which some States would have of rendering others tributary to them by commercial regulations would be impatiently submitted to by the tributary States. The relative situation of New York, Connecticut, and New Jersey would afford an example of this kind. New York, from the necessities of revenue, must lay duties on her importations. A great part of these duties must be paid by the inhabitants of the two other States in the capacity of consumers of what we import. New York would neither be willing nor able to forego this advantage.... Would Connecticut and New Jersey long submit to be taxed by New York for her exclusive benefit? Should we be long permitted to remain in the quiet and undisturbed enjoyment of a metropolis, from the possession of which we derived an advantage so odious to our neighbors, and, in their opinion oppressive?"[14]

Common Market Means an Unrestrained Intercourse Between States

Hamilton: "An unrestrained intercourse between the States themselves will advance the trade of each by an interchange

of their respective productions, not only for the supply of reciprocal wants at home, but for exportation to foreign markets. The veins of commerce in every part will be replenished and will acquire additional motion and vigor from a free circulation of the commodities of every part. Commercial enterprise will have much greater scope from the diversity in the productions of different States. When the staple of one fails from a bad harvest or unproductive crop, it can call to its aid the staple of another. The variety, not less than the value, of products for exportation contributes to the activity of foreign commerce. It can be conducted upon much better terms with a large number of materials of a given value than with a small number of materials of the same value, arising from the competitions of trade and from the fluctuations of markets. Particular articles may be in great demand at certain periods and unsalable at others; but if there be a variety of articles, it can scarcely happen that they should all be at one time in the latter predicament, and on this account the operations of the merchant would be less liable to any considerable obstruction or stagnation. The speculative trader will at once perceive the force of these observations, and will acknowledge that the aggregate balance of the commerce of the United States would bid fair to be much more favorable than that of the thirteen States without union or with partial unions."[15]

PROVISION 84

From Article I.8.3

The people of the states empower the Congress to regulate commerce with the Indian tribes.

This provision gives the Congress the RIGHT to regulate all trade or commerce with the Indians.

When the Constitution was adopted, the thirty-five tribes living east of the Mississippi River were functioning as independent governments — in fact, the federal government treated them as separate and distinct sovereignties similar to the European nations. Consequently, the government entered into treaties with the Indians much as they did with other nations. However, relations with the Indians were unique in many ways, and it seemed apparent that eventually they would become assimilated into the culture of the American nation.

In 1824 the Bureau of Indian Affairs was established to deal with problems involving the Indians.

In 1830 the Indian Removal Act allowed Congress to open up lands west of the Mississippi for relocating the Indian tribes. This compulsory relocation was to the Indians a "trail of tears," subjecting them to hardships and inequities that left many regrets in the minds of subsequent generations, both Anglo and Indian. It seemed a matter of providential justice that some of the barren regions where many of the Indians were relocated turned out to be among the richest oil fields in the country!

In 1849 the Bureau of Indian Affairs

was made a branch of the Department of the Interior.

By a congressional act of 1871, the Indian tribes ceased to be considered independent or foreign nations, and the Indian Citizenship Act of 1924 granted U.S. citizenship to all Indians born within the territorial limits of the United States.

About the only area where the commerce clause has been used to control commercial activities among the Indians has been in connection with the sale of alcohol to them.

All other laws governing the Indians are based on the doctrine of *parens patriae,* concerning which the Supreme Court has said:

"From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power."

In 1886 the government imposed a system of criminal laws for Indians living on their reservations. Even if an Indian becomes a citizen, the federal government has jurisdiction over him "so long as he remains a member of his tribe, under the charge of the Indian agents, and so long as the United States holds in trust the title to land which has been allotted him."[16]

PROVISION

85

From Article I.8.4

The people of the states empower the Congress to establish a uniform system of rules and regulations for the naturalization of those desiring to become citizens of the United States.

This provision gave the Congress the RIGHT to decide who and under what circumstances immigrants might become citizens of the United States.

Never in history has there been a nation of refugees like the United States. In a sense it is a conglomerate of immigrant minorities who have become part of the American majority, with more freedom, civil rights, and opportunity to prosper than any consortium of humanity either past or present.

A Nation's Greatest Resource

A major element of the American success story is the fact that the Founders considered a law-abiding, hard-working population of productive people its greatest resource. Only a few nations appreciate this point of view. Most of them suffer from a Malthusian complex with imaginary nightmares of an overpopulated planet smothered with people. Israel, on the other hand, with a territory one-eighth the size of a state such as Idaho, has three times the population and still wants to double her population because it would double her human resources.

The Founding Fathers had a similar attitude. John Adams said he was looking

forward to the day when the United States would have two hundred to three hundred million people working and prospering together.

In the Declaration of Independence there is a complaint that George III "has endeavored to prevent the populating of these States, for that purpose obstructing the laws for the naturalization of foreigners, and refusing to pass others to encourage their migrating hither." As with modern Israel, the Founders of the American colonies were anxious to attract large numbers of immigrants to this continent.

The Right of Expatriation

Even after the Revolutionary War and the peace treaty at Paris, the British government would not acknowledge the right of Americans to terminate their responsibilities as native citizens of England, if they had been born in that country. The War of 1812 between the United States and England was caused in part by Britain's claim that she could use force to take English-born seamen from our ships to serve in her defense against Napoleon. Great Britain had always claimed the right to raise both land and naval forces by compulsion and to seek out native-born Englishmen for this purpose wherever they could be found. Often, relatives never knew what happened to them.

In 1807, King George III (who was still alive) ordered all men who had been born under the English flag to return home. A warning was issued that no foreign letters of naturalization could in any manner divest natural-born citizens of their allegiance to the English government or release them from the duty to serve in the British armed forces. It is rather amazing that England was insisting on her right to visit and search American ships in time of peace clear down to 1858, when President Buchanan finally sent our navy to the Gulf of Mexico to compel the British to desist.

The United States had always held (contrary to a long-standing view of many European countries) that a person has an unalienable right to divest himself of his original citizenship and become a naturalized citizen of another country. The English doctrine set forth in the commentaries of Chancellor James Kent was that each person owed a perpetual and unchangeable allegiance to the government of one's birth, and that a citizen is precluded from renouncing his allegiance without permission of that government.[17]

It was not until 1870 that England finally came around to the American point of view and passed a law allowing British subjects to expatriate themselves and at the same time permit "foreigners" to become naturalized citizens of Britain with all the rights of the native-born.

Immigration and Naturalization

The Supreme Court has sustained the position that the United States has the right, inherent in a sovereign nation, to determine the conditions under which persons shall be allowed to enter the country and the rules or provisions by which they may be naturalized. This broad power allows the government to impose quotas, qualifications, restrictions, and even outright prohibitions against certain classes of immigrants. In the beginning the immigration quotas favored the northern European population, and certain races or classes of people have been totally excluded at times.

Even under the Immigration and Naturalization Act of 1952 there were thirty-one categories of aliens who were excluded from the United States. Howev-

er, the act of June 27, 1962, provided that "the right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race or sex or because the person is married."[18]

A Federal Responsibility

James Madison made it clear why naturalization could no longer be left to the varied and divergent policies of the different states but must be delegated to the national government.

Madison: "In one State, residence for a short term confirms all the rights of citizenship; in another, qualifications of greater importance are required. An alien, therefore, legally incapacitated for certain rights in the latter, may, by previous residence only in the former, elude his incapacity; and thus the law of one State be preposterously rendered paramount to the law of another, within the jursidiction of the other.

"By the laws of several States, certain descriptions of aliens, who had rendered themselves obnoxious, were laid under interdicts inconsistent not only with the rights of citizenship but with the privilege of residence. What would have been the consequence if such persons, by residence or otherwise, had acquired the character of citizens under the laws of another State, and then asserted their rights as such, both to residence and citizenship, within the State proscribing them? Whatever the legal consequences might have been, other consequences would have resulted of too serious a nature not to be provided against."[19]

Requirements for Citizenship

Since the Constitution was written, over forty-five million immigrants have flowed to the United States from all over the world. Most of them have come hoping to attain full citizenship as "Americans." This takes at least five years. Here are the requirements:

1. The applicant must be at least eighteen years old.
2. The applicant must have proof that he or she entered the country lawfully.
3. The applicant must have lived in the United States for five consecutive years (three years if the spouse of a citizen), and he or she must have lived for six months in the state in which the petition is filed.
4. The applicant must be of good moral character, having two citizens to testify to the fact. According to U.S. law, an alien is not considered to be of good moral character if he or she is a drunkard, an adulterer, a bigamist or polygamist (having two or more wives at the same time), a professional gambler, a convicted murderer, or if he or she has lied to the Immigration and Naturalization Service or has been in jail more than 180 days during his or her five years in the United States.
5. The applicant must demonstrate a knowledge of the history and form of government of the United States and must be "attached to the principles of the Constitution."
6. The applicant must demonstrate an understanding of the English language and be able to speak, read, and write words in common usage. (This requirement is waived if the applicant has a handicap that does not permit him to do these things.)

The declaration of intention is filed with the Immigration and Naturalization Service. Sometimes an investigation is conducted. Eventually the applicant is called in to be examined. If the results are satisfactory, the applicant's file is sent to a

court where the applicant can be sworn in as a citizen of the United States and receive a certificate of naturalization. The oath of allegiance which every naturalized citizen must take is as follows:

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the armed forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God."

Once a person has been naturalized he or she has every civil right to which a "natural-born" American citizen is entitled —with one exception. Only a natural-born citizen can serve as President or Vice President of the United States.

Illegal Aliens

A major challenge facing the United States today is the problem of illegal aliens. There are between 15 to 32 million living in the United States, hailing from many countries. Some of them have been here so long there is talk of granting them amnesty so they can begin preparing themselves for full citizenship. However, it is recognized that a massive wave of illegal aliens banded together with hostile or violent attitudes toward the United States could be a serious threat to the internal security of the country. Americans have always been sympathetic to those who have come from abject poverty and brutal dictatorships seeking a better life. However, in recent years, authorities have observed an increasing number of illegal aliens who are either professional criminals or steeped in revolutionary ideology with training in terrorism. It is the responsibility of the federal government to see that these conditions are corrected so that criminal and revolutionary aliens are not allowed to threaten the

Illegal aliens, arrested near Chula Vista, California, are prepared for deportation back to Mexico.

peace and well-being of the American people.

Citizenship Can Be Forfeited

Congress provided eleven ways a person could lose his citizenship in the United States, regardless of whether he is native-born or naturalized:

1. Obtaining naturalization in a foreign state.
2. Taking an oath of allegiance to a foreign state.
3. Serving in the armed forces of a foreign state without authorization and with the consequent acquisition of citizenship in that country.
4. Accepting public office in a foreign state when only the nationals of that state are eligible.
5. Voting in a foreign state.
6. Formal renunciation of citizenship before an American foreign service officer abroad.
7. Formal renunciation of citizenship within the United States in time of war, subject to the approval of the Attorney General.
8. Conviction and discharge from the armed services for desertion in time of war.
9. Conviction of treason or an attempt at forceful overthrow of the United States.
10. Fleeing or remaining outside the United States in time of war or a proclaimed emergency in order to evade military training.
11. Residence abroad by a *naturalized* citizen (with certain exceptions) for three years in the country of his birth or in which he was formerly a national or for five years in ANY foreign country.

Thus far, four of these have been tested in the court, with the following results:[20]

1. A citizen CAN lose his citizenship by voting in a foreign country.

2. A citizen CAN lose his citizenship by enlisting in the armed forces of a foreign state unless he was involuntarily conscripted and coerced to serve.

3. In a very unpopular decision, the court held in *Trop* v. *Dulles*[21] that Congress is without power to divest citizens of their citizenship for desertion in time of war. Four justices dissented, saying there is a definite relationship between the rights of citizenship and the refusal to perform this ultimate DUTY of citizenship to serve in the defense of the country. The dissent declared: "Congress in the exercise of its war powers reasonably may conclude that morale and ... efficiency of our troops would impair if our soldiers knew that deserters in war time were to remain in the communion of citizens."

4. In an equally controversial decision, the Warren court held that Congress could not impose forfeiture of citizenship upon those who, in time of war, left or remained outside the country in order to evade military service. This decision was justified on the grounds that Congress had deprived the citizen of his rights without "due process."[22]

Authorities suggest that if the United States were involved in a defensive war in the Western Hemisphere, the last two cases would be promptly reversed. In that case, deserters could be divested of citizenship and those who remain outside the United States to avoid military service could also be divested.

PROVISION 86

From Article I.8.4

The people of the states empower the Congress to establish uniform laws on the subject of bankruptcy throughout the United States.

This provision gave the Congress the RIGHT to preempt the many varied bankruptcy laws of the states and establish a single federal system which would apply thoughout the country. As Madison stated:

"The power of establishing uniform laws of bankruptcy is ... intimately connected with the regulation of commerce, and will prevent ... many frauds where the parties of their property may lie or be removed into different States."[23]

In England the original bankruptcy law applied only to traders, but the U.S. Supreme Court has given tacit approval to the extension of the federal bankruptcy laws to "cover practically all classes of persons and corporations, including even municipal corporations."[24]

Thomas James Norton says: "Much difference of opinion prevails as to the value or the justice of the National Bankruptcy Act, some believing it to be not only a shield but also an inducement to dishonest men."[25]

The reluctance of Congress to exercise this power is borne out by the fact that it provided for this law only in "fits and starts." For example, Congress passed the first national bankruptcy act in 1800 and repealed it in 1803; the next one was passed in 1841 and repealed two years later; the third was passed in 1867 and repealed in 1878. Finally, a national bankruptcy law was passed in 1898 which, with amendments, still exists. Nevertheless, it is apparent that the implementation of the Constitution with reference to bankruptcy was not readily achieved. In fact, during the first eighty-nine years of the nation's history a national bankruptcy law was in existence only sixteen years altogether. The Supreme Court held that in the absence of a federal statute the states were at liberty to regulate such matters.

The early law of Rome gave the legal creditors the savage remedy of dismembering the body of the debtor or selling him and his family into slavery. A later remedy was throwing the debtor into prison. The bankruptcy laws developed slowly in England. The first English statute was under Henry VIII, wherein the Lord Chancellor was empowered to seize the estate of any "FRAUDULENT" debtor and have his property distributed among his creditors according to their proportionate amount. The bankruptcy law discharges the debtor of his prior obligations once his assets have been taken over by the court and distributed to his creditors. He can then set about rehabilitating himself and rebuilding his estate. Beginning with the act of 1841, the debtor did not have to wait until he was forced into bankruptcy by his creditors, but could enter a voluntary petition to the court to have himself declared bankrupt. This allowed the bankrupt to get out from under a load of misfortune and begin anew.

Because so many individuals have been suspected of abusing the system with multiple bankruptcies, the law limits the chronic insolvent to one bankruptcy every six years!

The bankruptcy code of 1978 provides for three types:

1. A Chapter XI bankruptcy is filed by a corporation to delay foreclosure and allow time to remain in business long enough to reorganize and work out a plan to pay its debts. This action prevents its creditors from taking any immediate legal action against the company.
2. A Chapter XIII bankruptcy is filed by a wage-earning individual who wants to pay his debts, but whose creditors will not give him enough time. The wage-earner surrenders his wage to the court for a small payment to the creditors each month until the debts are paid in full.
3. A Chapter VII bankruptcy is the one most often filed by either individuals or corporations. The debtor's assets are taken over by the bankruptcy court and sold to pay the creditors on a proportional basis. The bankrupt individual is allowed certain exemptions which the court will permit him to keep. These exemptions include:

   a. A $15,000 equity in a home (but this may be applied to other personal assets if the debtor and spouse do not own a home).

   b. A $1,200 interest in a car, clothes, and household goods up to a limit of $200 per item; and up to $500 worth of jewelry.

After the debtor's assets are liquidated, the court issues an order declaring the debtor to be free and clear of any further obligations. It is this aspect of a voluntary bankruptcy case which invites fraud and deception.

This is why bankruptcy had to be limited to once in every six years. It doesn't solve the problem of fraud but it probably minimizes it somewhat.

---

1. Norton, *The Constitution of the United States*, p. 51.
2. Ibid.
3. Corwin, *The Constitution and What It Means Today*, p. 152.
4. Ibid., p. 157.
5. Ibid., pp. 162–64.
6. 221 U.S. 612, 618–19.
7. 156 U.S. 1.
8. 298 U.S. 308–9.
9. 301 U.S. 38, 41–42.
10. 234 U.S. 342.
11. 346 U.S. 482.
12. Corwin, *The Constitution and What It Means Today*, p. 189.
13. *Federalist Papers*, No. 42.
14. Ibid., No. 7.
15. Ibid., No. 11.
16. 241 U.S. 591.
17. Corwin, *The Constitution and What It Means Today*, p. 301.
18. 8 U.S.C. 1422.
19. *Federalist Papers*, No. 43.
20. See Corwin, *The Constitution and What It Means Today*, p. 302.
21. 356 U.S. 86, 104, 114, 120–22.
22. *Kennedy v. Mendoza-Martinez;* 372 U.S. 144, 186, 187.
23. *Federalist Papers*, No. 43.
24. Corwin, *The Constitution and What It Means Today*, p. 307.
25. Norton, *The Constitution of the United States*, p. 59.

CHAPTER

MONEY, POST OFFICES, AND COPYRIGHTS AND PATENTS

Probably no aspect of the American economy has strayed further from the Constitution than the monetary system. One of the important goals of the Founders was to have a system of honest money that would encourage savings, investments, and frugality. In this chapter we will trace the rather amazing story of what happened to the Founders' dream. It remains important today because their aspiration for a system of honest money is still possible to attain.

We will also cover what started out to be a government monopoly of mail services. This government experiment has also gone through an interesting evolution which is covered in this chapter.

Then there is the secret to America's promotion of creative talent and the encouragement of those with inventive genius. There are

many interesting aspects to the copyright of words, music, and art, as well as the protection of cunning devices for which patents may be obtained.

PROVISION 87

From Article I.8.5

The people of the states empower the Congress to coin money and regulate the value thereof and also of foreign coins.

This provision gave the Congress the RIGHT to produce the national coin, prescribe the weight and fineness or value, and specify the value of foreign coin in terms of the national coin of the United States.

In the original draft of this provision, the federal government was going to be allowed to "emit bills of credit" (paper money), but this was struck out. The Founders had lost confidence in paper money. During the Revolutionary War they had issued paper money on the assumption that it would be redeemed in gold or silver by the states. Then the states began issuing vast quantities of paper money and England brought over bales of American counterfeit paper money. It soon became evident to everyone that all the so-called Continental (paper) dollars couldn't possibly be redeemed by the states or anyone else. Their value therefore fell to less than a penny per dollar and people began to speak of worthless things as "not worth a Continental."

It was decided that the government would mint only gold and silver coins as "money."

Founders' Strong Feelings Concerning "Constitutional Money"

To appreciate how strongly the Founders felt about paper money, the following is quoted from Madison's notes at the Convention:

G. Morris: "Moved to strike out 'and emit bills on the credit of the United States.' If the United States had credit, such bills would be unnecessary; if they had not, unjust and useless."[1]

Ellsworth: "Thought this a favorable moment to shut and bar the door against paper money. The mischiefs of the various experiments which had been made were now fresh in the public mind, and had excited the disgust of all the respectable part of America. By withholding the power from the new government, more friends of influence would be gained to it than by almost anything else. Paper money can in no case be necessary. Give the government credit, and other resources will offer. The power may do harm, never good."[2]

Wilson: "It will have a most salutary influence on the credit of the United States to remove the possibility of paper money. This expedient can never succeed whilst its mischiefs are remembered. And as long as it can be resorted to, it will be a bar to other resources."[3]

Butler: "Remarked that paper was a legal tender in no country in Europe. He was

urgent for disarming the government of such a power."[4]

Read: "Thought the words, if not struck out, would be as alarming as the mark of the beast in Revelations."[5]

Langdon: "Had rather reject the whole plan than retain the three words 'and emit bills.'"[6]

It was felt that the people would regain their confidence in American money if the Congress authorized the issues of only gold and silver coins as legal tender. In fact, they wrote into Article I, section 10, clause 1, that "No state shall . . . emit bills of credit [or] make anything but gold and silver coin a tender in payment of debts."

States Approve Founders' Position on Money

At the ratification conventions, this provision was viewed with great satisfaction:

McKean: "The power to coin money and regulate its value, must be esteemed highly advantageous to the States, for hitherto its fluctuation has been productive of great confusion and fraudulent finesse. But when this power has established a certain medium throughout the United States, we know the extent and operation of our contracts, in what manner we are to pay or to be paid; no illicit practice will expose property to a sudden and capricious depreciation, and the traveller will not be embarrassed with the different estimates of the same coin in the different districts through which he passes."[7]

The only problem with all of this is the fact that in the ordinary course of business, people strongly prefer the convenience of a paper medium of exchange over that of bulky coins. In other words, when paper money is redeemable in gold and silver so the people can trust it, they will use it in business more extensively than metal coins.

As Benjamin Franklin said, "Paper money, well funded, has another great advantage over gold and silver: its lightness of carriage, and the little room that is occupied by a great sum, whereby it is capable of being more easily and more safely, because more privately, conveyed from place to place."[8]

Since the above provision of the Constitution had restricted the Congress to gold and silver coins as the official "money" of the United States, it was assumed the paper currency would be issued by the banks, backed by gold and silver. Those banks which did so, maintained the credibility of their bank notes but others could not resist the temptation to print more notes than they could redeem. Thus, a tug of war began to emerge over what the United States should allow to be used as "money," and that war is still being waged. At the moment, gold and silver have lost out and irredeemable paper money has prevailed even though it is in violation of several specific provisions of the Constitution.

In order to help explain how we have shifted from where the Founders were in 1787 to where we are today, the following outline of the history of our money is provided.

The History of American Money

During the Revolutionary War two things almost led to the defeat of the struggle for American independence. One was the inadequate system of constitutional government and the other was unsound money.

Congress issued about $240 million in "Continentals"—referring to money of the Continental Congress. It was under-

stood that this money would be redeemed in gold or silver by the states after the war.

The states thought this was a great way to manufacture money so they issued vast quantities of their own paper currency.

The British saw what was happening so they printed up bales of counterfeit "Continentals" and used them to buy supplies from Americans.

Before long confidence in the Continentals had sunk so low that by 1780 they were not even worth one cent. No further paper money was issued by the United States for over eighty years.

The American market had already accepted the Spanish dollar as its basic unit of value. It was minted in Mexico and called a "piece of eight," or a *peso*. The words *Spanish peso* are said to have been abbreviated into an *S* and a *P* with one written over the other. This was further abbreviated to a "$" sign.

The word *dollar* originally came from a Bohemian word *thal*, meaning "valley." A silver coin was minted in a certain Bavarian valley and became known as a "thaler" which was transliterated into English as a "dollar."

In the 1700s the Spanish came out with a silver coin of almost exactly the same size and weight as the thaler. It represented eight Spanish gold "reals" and was therefore called a "piece of eight." In the marketplace merchants referred to this as the "Spanish dollar." However, to make change, they would cut a dollar into eight pieces or "bits." These began to be called two bits for a quarter, four bits for fifty cents, and six bits for seventy-five cents.

In 1785, two years before the Constitution was written, the Congress accepted the Spanish dollar as the official unit of value for the United States and determined that all foreign coin would be evaluated in terms of the Spanish dollar.

In 1786, the year before the Constitution was adopted, the Board of Treasury fixed the silver weight of the adopted dollar at 375 and 64/100s grains of fine silver. The value of gold coins or any other coins was to be calculated in terms of the silver dollar of this weight and fineness.

It will be noted that three things had been established before the Constitution was adopted:

1. That the official money of the United States would be precious metals—silver and gold.
2. That the basic unit of value would be called a "dollar" and consist of 375 and 64/100s grains of fine silver.
3. All other coins, both foreign and domestic, would be evaluated in terms of this official silver dollar.

All of this was already part of the law of the land when the Constitution was adopted. Therefore the Founders wrote the following provisions in the Constitution concerning money based on the above statutes which had previously been adopted as the official monetary system. They wrote:

1. Congress shall have the power "to coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures." (Article I, section 8, clause 5.)
2. Congress shall have the power to punish the counterfeiting of money. (Article I, section 8, clause 6.)
3. No tax on imported persons (bonded servants) shall exceed ten dollars. Note the reference to "dollars" in this provision. (Article I, section 9, clause 1.)

4. No state shall coin money, emit bills of credit, or make anything but gold and silver coin a tender in payment of debts. (Article I, section 10, clause 1.)
5. In civil cases for more than twenty *dollars,* the right of trial by jury shall be preserved. (Seventh Amendment.)

In 1792 the Coinage Act was passed. It invoked the death penalty for anyone debasing the money. It provided for a United States mint where silver dollars were coined along with gold coins beginning in 1794. Altogether nearly 900,000,000 silver dollars were coined from that time until 1935 when the treasury stopped minting them.

1. Silver dollars contained 416 grains of standard silver similar to the Spanish dollar, which had now been determined to be 371.25 grains of *fine* silver.
2. Half dollars, quarters, and dimes and "half dimes" contained a proportionate amount of silver.
3. Pennies and half pennies were made of copper.
4. Gold eagles were worth ten silver dollars, with a ratio between gold and silver fixed by statute. The fixing of this ratio by statute turned out to be a mistake. Each metal should have been allowed to follow its independent market value.
5. Half eagles (worth $5) and quarter eagles (worth $2.50) were also minted. Later, double eagles (worth $20) were minted.
6. Free minting privileges were granted to all citizens. They could take either gold or silver to the mint and have it minted into coins. This practice lasted until 1873.

The ratio between gold and silver which was fixed by statute at 15 to 1 was soon out of phase in favor of gold. As a

The Constitution allowed the federal government to coin money, but prohibited such action by the states.

result, much of the American gold stocks began to be purchased by Europe.

In 1834 the ratio was changed to 16 to 1 in favor of silver, and from then until the Civil War the nation was, for all practical purposes, on a gold standard. Europe began buying silver, with the gold it had previously accumulated. This soon brought gold stocks back to the United States.

Paper Currency

We have already noted that there are two kinds of paper currency which are not "money" but circulate as such: the first is *debt* money, which can be redeemed in silver or gold on demand, and the other is *fiat* (paper) money, which is designated as legal tender but cannot be redeemed for anything.

As indicated earlier, the original draft of the Constitution authorized Congress to "emit bills of credit." This had reference to debt money or currency which would be redeemed with gold or silver. After an extensive discussion the Founders decided they couldn't risk it. There would be no United States *debt* currency or bills of credit. As for *fiat* money, this was so abhorrent to the Founders they didn't even discuss it.

As mentioned earlier, the Founders knew that people do not like to conduct business—except for minor transactions—with precious metal. Metal money is too heavy, too bulky, and in substantial amounts is dangerous to transport. It is much more convenient and safe to use paper currency. The Founders realized this, but expected the banks to issue notes (redeemable in gold or silver) which would fill this need.

Over the objections of Jefferson and Madison, Alexander Hamilton persuaded Congress to approve a United States Bank for a period of twenty years. This was actually a private bank, but it functioned as a depository for the United States and collected taxes. It also issued redeemable bank notes which circulated as currency. Other private banks did the same.

By 1798 Alexander Hamilton decided that this procedure was a mistake. He felt that if currency or bank notes were to be issued and circulated as "money," it should have been done by Congress.[9]

Unfortunately, no steps were taken to remedy the problem, so by the time of the Civil War there were thousands of banks issuing thousands of different kinds of bank notes. Furthermore, many banks were issuing far more notes than they had reserves. There was also a tremendous amount of counterfeiting. Before long the whole system began to falter.

When the Civil War required vast new expenditures, the banks wanted extremely high rates of interest on any loans to the Union (15 to 36 percent), and so Congress felt compelled to issue fiat money. These "greenbacks" could not be redeemed in gold or silver and were limited somewhat in the things for which they could be spent. Their value soon dropped to around 35 cents.

Finally, in 1878, Congress promised to redeem the greenbacks in gold. This changed the greenbacks from cheap *fiat* money to *debt* money, redeemable at face value. At first there was a run on gold as people traded in their greenbacks, but when they found they really could get the gold, then people didn't want it. They returned the gold to the bank and took back paper money instead. This left the United States on the gold standard until 1933.

Meanwhile, Congress phased out the bank notes issued by state banks by putting a tax on them, thereby discouraging their use. In 1863–64 the Congress passed a series of national bank acts which set up a system of privately owned banks chartered by the federal government. These national banks issued notes backed by U.S. government bonds, and these national bank notes became the country's chief currency. When the greenbacks received gold backing in 1878 they also moved up to a par value with the national bank notes.

In 1913 the Federal Reserve replaced the national bank system, and Federal Reserve notes were issued with a promise to redeem them in gold on demand.

Then, in the year 1933, the United States abandoned the gold standard. These were the circumstances:

1. On April 5, 1933, one month after his inauguration, President Franklin D. Roosevelt declared a national emergency and ordered all gold coins, gold bullion, and gold certificates to be turned in to the Federal Reserve banks by May 1. This order applied only to those residing in the United States. It did not apply to foreigners living abroad. Within the United States only those who had special gold collections or needed the gold for industrial or professional use were allowed to retain quantities of the yellow metal.

2. As gold coins, gold bullion, or gold certificates were turned in, the American people received Federal Reserve notes redeemable in silver.
3. On May 22, Congress enacted a law (48 Stat. 31) declaring all coin and currencies then in circulation to be legal tender, dollar for dollar, as if they were gold. It also empowered the President to reduce the gold content of the dollar up to 50 percent.
4. On June 5, Congress enacted a joint resolution (48 Stat. 112) that all gold clauses in contracts were outlawed and no one could legally demand gold in payment for any obligation due him.

On January 30, 1934, the Gold Reserve Act was passed, giving the Federal Reserve title to all the gold which had been collected. This act also changed the price of gold from $20.67 per ounce to $35 per ounce, which meant that all of the silver certificates the people had recently received for their gold now lost 40 percent of their value.

The next day the President proclaimed (48 Stat. 1730) that the dollar was to be fixed at 15 and 5/21 grains of standard gold and was to be maintained at this level "in perpetuity." This is still the definition of the "dollar" in the United States code. Russia and the central banks of Europe began buying up gold in huge quantities.

Thus there came into being a dual monetary system: a gold standard for foreigners and Federal Reserve notes (redeemable in silver) for Americans.

From 1914 to 1973 American currency went through the following erosion:

1. From 1914 to 1934 every Federal Reserve note was redeemable in gold and silver.
2. Between 1934 and 1963 all Federal Reserve notes promised to pay (or be redeemed) in "lawful money," which meant silver. Then the wording on the Federal Reserve notes began to be changed to somewhat obscure language, which should have given Americans a warning that the government was planning something.
3. In 1965 President Lyndon Johnson authorized the treasury to begin issuing debased "sandwich" dimes and quarters with little or no intrinsic value, and the quantity of silver in fifty-cent pieces was reduced 40 percent.
4. On June 24, 1968, President Johnson issued a proclamation that henceforth Federal Reserve silver certificates were merely *fiat* legal tender and could not be redeemed in silver.
5. On December 31, 1970, President Richard Nixon authorized the treasury to issue debased "sandwich" dollars and half dollars.
6. By August 1971 many of the European countries had collected so many billions in Eurodollars (foreign aid, money spent by the U.S. military abroad, etc.) that European banks had begun to get nervous about redeeming their money in gold. A threatened run on the U.S. Treasury resulted in the American gold window being slammed shut. This resulted in a collapse of the dollar on the world market. Since then it has fluctuated on the world market like any other commodity, since it is no longer redeemable in precious metal and therefore has no intrinsic value.
7. In 1973, the U.S. dollar was officially devalued, changing the price of gold from $35 per ounce to $42.23 per ounce.
8. On March 16, 1973, Congress set the American dollar completely afloat with

nothing to back it up but the declaration of the government that it was "legal tender," or fiat currency.

9. The world market immediately reflected serious erosion in the value of the American dollar. To buy an ounce of gold it took not $42.23 but $100, then $200. After that, it moved higher and higher until it required $800 to buy an ounce of gold. Gradually some confidence was restored in the dollar as the symbol of the American economy, and so it settled back down to a plateau of approximately $300 plus.

Today the American economy operates under a monetary system which is completely outside the Constitution. Its fiat money is continually manipulated both in value and in quantity. This has had a devastating impact on its purchasing power, which is now down to about 8 percent of its 1933 value. It has eroded the value of savings, insurance policies, retirement funds, and the fixed incomes of the elderly.

PROVISION

88

From Article I.8.5

The people of the states empower the Congress to fix the standard of weights and measures.

This provision gave the Congress the RIGHT to establish a uniform standard of weights and measures throughout the entire United States.

This provision is similar to a section in the Articles of Confederation. The experience of the early colonies demonstrated that uniformity in weights and measures as well as the fixing of standards of quality in various products is of the utmost importance in promoting healthy commerce throughout the nation. In the absence of reliable weights and measures the colonists found that a rash of systematic frauds developed in the channels of trade.

In spite of the fact that clear back in the days of the Magna Charta (A.D. 1215) a standard had been established for the measurement of liquids, the measurements of cloth and the measurements of weights, the problem of fraudulent representation in weights and measures still prevailed. The Constitution therefore gave the federal government the responsibility of establishing a national standard of weights and measures.

Americans Adopt English Weights and Measures

In 1838 the Congress officially adopted the English system of weights and measures to which Americans had already become accustomed.

This provided a standard for the pound, ounce, mile, foot, yard, gallon, and quart. The standard of liquid measurement was the wine gallon of 231 cubic inches. The Congress adopted the old English or Winchester "bushel" as the measurement for dry products such as fruits, vegetables, and grains. A bushel

was fixed at eight gallons or four pecks and represents 2150.42 cubic inches. This particular measurement was used in England from the earliest Anglo-Saxon times.

The Congress also fixed the size of barrels for apples and similar dry products and established the size or capacity of baskets to be used for fruits and vegetables.

The Metric System

The French had set up a different system after the French Revolution called the metric system and it was adopted throughout Europe. However, the Congress initially rejected this system of standards at the same time they formally adopted the English system. Nevertheless, in 1866 Congress authorized the metric system for any who might wish to use it. The French system never became widespread except in scientific or technical work.

Most Americans prefer the English system for daily use, because it is practical and easier to adapt to most household or routine professional activities. For example, the French system divides things into tenths and fifths. The English system divides things into halves and quarters. It is easy to cut a pie into quarters or even eighths but more difficult to cut it into fifths. One can look at a quart of milk and visually judge rather accurately what half a quart would be. It is much more difficult to visualize what it would be in fifths. The metric system is based on the meter (39.37 inches) for length, the liter (61.025 cubic inches) for capacity, and the gram (.0022 of a pound) for the unit of weight.

Each State Furnished Official Weights and Measures

In 1881, the Congress authorized the Secretary of the Treasury to deliver to the governor of each state, for the use of agricultural colleges, a complete set of all weights and measures which had been adopted as a standard.

In addition to the power to coin money, the federal government was to establish a standard for weights and measures.

In 1901, Congress established the National Bureau of Standards. Its original purpose was to test goods purchased by the government to determine their quality and durability. It was also to cooperate with the manufacturers of scales and containers to make certain that they conformed to the established standard. However, this bureau was not created as an enforcement bureau. That came later.

The federal enforcement of a multitude of standards is at present voluminous and confusing. Over 1,000 programs are administered by 413 federal agencies. The better-known enforcement agencies are the Food and Drug Administration, the Federal Trade Commission, the Department of Commerce, the Department of Agriculture, and the Office of Consumer Affairs. Overlapping responsibilities and some oppressive enforcement policies have led to numerous complaints which Congress is attempting to handle.

PROVISION 89
From Article I.8.6

The people of the states empower the Congress to provide for the punishment of counterfeiting of United States securities and current coin.

This provision gave the Congress the RIGHT to make it a federal crime to counterfeit U.S. securities and coins.

The Secret Service, which is a branch of the Treasury Department, was given jurisdiction over counterfeit cases. The penalty for counterfeiting is a $5,000 fine and up to fifteen years' imprisonment.

There have been times in the history of the United States when counterfeiting was a thriving enterprise, particularly on the frontiers, where bogus money was not so likely to be detected.

Counterfeiting has also been a continuing plague on Europe. In 1789 the French revolutionary government issued currency known as assignats. By 1796 the enemies of the revolutionary administration had circulated billions of counterfeit assignats until they became worthless and had to be repudiated by the government. In 1812 Napoleon engaged in counterfeiting by secretly printing vast quantities of money which he used to purchase supplies for his invasion of Russia.

In the United States counterfeiting was relatively simple during the first 75 years because all paper money was issued by private banks. These had over 3,000 individual designs, and none of them were so artistically executed but what they could be readily duplicated. In 1862 the United States printed its first issue of "greenbacks," and in 1864 $100,000 was appropriated to suppress the counterfeiting of U.S. currency, U.S. bonds, and U.S. coins.

For some time the U.S. Treasury has been considering the issuing of new money containing sophisticated metal strips which would be extremely difficult to counterfeit. It is said that a machine next to a cash register at each store could immediately detect any counterfeit money if this were adopted.

PROVISION 90
From Article I.8.7

The people of the states empower the Congress to establish post offices and designate those roads which are to be used for postal services.

This provision gives the Congress the RIGHT to set up a national system of postal services and select the routes which will expedite its delivery.

Postal service developed slowly in the colonial period. The first post office was established in Massachusetts in 1639. The first post road was established in 1672 connecting Boston and New York.

The early colonies appointed a specific individual to use his home as a postal clearing house and the owner was paid so much per letter for handling the mail and getting it delivered. Post dispatches were set up on a weekly or biweekly basis between major towns and cities until, by 1707, John Hamilton was designated as the Royal Deputy Postmaster General. In 1753 this office went to Benjamin Franklin. This is the only time in history that the postal service was operated at a profit. By 1789 there were about 75 post offices in the thirteen states.

It was on the basis of Franklin's postal setup that the federal government inaugurated its own postal system in 1789.

Originally, delivery service was prepaid in cash when the letter was delivered to the post office for handling. England, however, developed a system of stamps which varied in cost according to the distance the letter had to travel. This same system was adopted in the United States for the first time in 1846.

Other postal facilities and services have been gradually instituted as follows:

1. The first postage stamps were issued in 1847.
2. Stamped envelopes were introduced in 1852.
3. Registered letters began in 1855.
4. A uniform rate of postage based on weight instead of distance was adopted in 1863.
5. The first free delivery and traveling railroad-car post offices began in 1863.
6. Postal money orders were introduced in 1864.
7. Postal cards began in 1873.
8. Special delivery started in 1885.
9. Rural delivery was introduced in 1896.
10. Postal savings began in 1910.
11. A parcel-post service was initiated in 1912.
12. Air-mail service began in 1918.

For many years it was held that the federal government could not construct post offices but could merely designate buildings to be used as such. In 1876 the Supreme Court held that the government had authority under the Constitution to purchase land and construct post offices upon it. Nevertheless, the government continues to "designate" rather than construct postal roads as such.

The government is not required to deliver certain types of mail which are anarchistic, subversive, designed to defraud or promote lotteries, or contain dangerous materials such as explosives.

The Postal Reorganization Act of 1970 transformed the United States Post Office (which had operated as a department of the executive branch) into a separate corporation. It now functions as an independent agency called the United States Postal Service.

In 1982, the U.S. Postal Service was operating 30,000 post offices throughout the United States and employed 660,000 postal workers. It handled over 99 billion pieces of mail and did $18 billion worth of business.

Post offices are divided into four classes, depending upon the receipts and volume of business handled by each one.

Mail is also divided into four classes:

1. First-class mail includes letters, postcards, and nearly all material which contains handwriting and is completely or partially sealed against inspection.

2. Second-class mail includes newspapers, magazines, and other periodicals which pay a flat rate on the reading material and zone rates on the advertising portion.
3. Third-class mail includes books, circulars, and all other materials of printed matter weighing not more than eight ounces.
4. Fourth-class mail includes books, merchandise, and printed matter weighing OVER 8 ounces. The postage rate is determined by both weight and distance.

PROVISION 91

From Article I.8.8

The people of the states empower the Congress to encourage the progress of science and the useful arts by issuing copyrights and patents to authors and inventors to grant them an exclusive right for a limited time to publish their writings or exploit their inventive discoveries.

This provision gave writers and inventors the exclusive RIGHT to have their creative works protected under the laws of the United States for a designated period of time.

One of the most important factors contributing to the unprecedented development of inventions and advanced industrial techniques in the United States is this provision of the Constitution. It has also contributed to the most elaborate and comprehensive publishing enterprise in the world. American books, American songs, and American machines have dominated most of the world because of the advantages and profits accruing to those who do creative work and function under the protection of this provision of the American charter.

This protective measure was not mentioned in the Articles of Confederation nor in the first draft of the Constitution. However, several states had used this means of protecting creativity, and James Madison suggested that it be included in the federal Constitution. The first copyright law was passed in 1790.

A number of important questions relating to copyright laws and patents were discussed by the Founders. Among them were the following:

- *Is this an appropriate subject for the federal government or should it be left to the states?*

Need for a National Copyright and Patent Law

McKean: "The power of securing to authors and inventors the exclusive right to their writings and discoveries, could only with effect be exercised by the Congress. For, Sir, the laws of the respective States could only operate within their respective boundaries, and therefore, a work which

had cost the author his whole life to complete, when published in one State, however it might there be secured, could easily be carried into another State, in which a republication would be accompanied with neither penalty nor punishment—a circumstance manifestly injurious to the author in particular, and to the cause of science in general."[10]

• *Should copyrights and patents be perpetual or limited to a designated period of time?*

Concerning the Duration of Patents

Jefferson: "It has been pretended by some (and in England especially) that inventors have a natural and exclusive right to their inventions, and not merely for their own lives, but inheritable to their heirs. But while it is a moot question whether the origin of any kind of property is derived from nature at all, it would be singular to admit a natural and even a hereditary right to inventors.... Inventions then cannot, in nature, be a subject of property. Society may give an exclusive right to the profits arising from them, as an encouragement to men to pursue ideas which may produce utility; but this may or may not be done, according to the will and convenience of the society, without claim or complaint from anybody. Accordingly, it is a fact as far as I am informed, that England was, until we copied her, the only country on earth which ever, by a general law, gave a legal right to the exclusive use of an idea. In some countries it is sometimes done in a great case, and by a special and personal act, but generally speaking, other nations have thought that these monopolies produce more embarrassment than advantage to society; and it may be observed that the nations which refuse monopolies of invention are as fruitful as England in new and useful devices."[11]

Jefferson: "Certainly an inventor ought to be allowed a right to be the benefit of his invention for some certain time. It is equally certain it ought not to be perpetual; for to embarrass society with monopolies of every utensil existing, and in all the details of life, would be more injurious to them than had the supposed inventors never existed."[12]

Notes on Copyright Laws

A copyright gives the exclusive, legal right to an author to publish, reproduce, and sell his original work. In 1976 the Congress passed a law dealing with copyrights which became effective in 1978. This provided that the original works of an author under copyright would be protected from the time of its creation rather than the time of publication. Furthermore, the protection would extend throughout the lifetime of the author and for an additional fifty years.

The classifications for copyrighted works are as follows:

1. Literary works.
2. Musical works and any accompanying words.
3. Dramatic works and any accompanying words.
4. Pantomimes and works of choreography (dance).
5. Pictures, graphics, and sculptures.
6. Audiovisual works such as motion pictures.
7. Sound recordings.
8. Computer programs.

When a book or other printed material is published in contemplation of being copyrighted, there should be a notice of

copyright printed on the flyleaf of the book together with the name of the copyright holder, and the year of publication. Within ninety days after publication, two copies should be submitted to the United States Copyright Office, Library of Congress, Washington, D.C. It should be accompanied by a copyright application and a registration fee.

Notes on Patent Laws

The first law to protect patent inventions was also passed in 1790 and the first letter of patent was signed personally by George Washington, Thomas Jefferson (Secretary of State), and Edmund Randolph (Attorney General). Collectors would probably pay a million dollars or more for this letter today.

In 1870 the numerous patent laws were consolidated and revised. This became the framework for the patent law which is still used today. The most recent patent law went into effect January 1, 1953. The patentee is given the exclusive right to manufacture, use, and sell the invention for 17 years. In order to get a patent, the inventor must be willing to disclose the complete operation of his invention and will forfeit his letter of patent if he has held anything back. His invention must be new, unique, and useful. For many years the inventor had to submit a working model of his invention but this is rarely required by the patent examiners today. It will be recognized that in some cases an inventor is best protected by not obtaining a patent. This occurs when the inventor stumbles onto a very simple procedure which could be easily copied and would be difficult to protect by a patent.

When an inventor can obtain a monopoly for 17 years, the expenditure of time and money needed to bring out a new invention becomes profitable and worthwhile.

Here is an interesting abstract from the biographical data on Thomas A. Edison, who obtained more than 1,200 patents during his lifetime, including: "A typewriter which later became the Remington; district telegraph signal box; quadruple telegraph repeaters for simultaneous dispatch of several messages over a single wire; a device which later became the mimeograph; transmission developments for the Bell telephone; the phonograph or 'talking machine'; the incandescent electric lamp; electric dynamo; ore separator; electric locomotive; valve gear; seven patents for electric transmission of power; railway signal system; process for making plate glass; kinetographic camera which made possible the first motion picture camera; composition brick; reversible galvanic batteries; compressing dies; photographic film for motion picture cameras; apparatus for producing very thin sheet metal; the process of constructing concrete buildings; starting and current supplying system for automobiles; methods for presenting illusions of scenes in colors; electric safety lanterns; the transmitter; regeneration of alkaline storage batteries; receiving apparatus for radio sets with new methods for producing sound-record tablets. During his last years he experimented with weeds for producing synthetic rubber. In February, 1930, he patented a process for extracting rubber from golden rod."[13] Had Edison been born where inventions were not protected, his story may have been quite different.

The patent office will provide copies of any patent for a small fee but will not allow anyone to even examine applications for patents which are still in process of review and are not yet protected.

Anyone obtaining a copy of a patent must not use it to violate the rights of the patentee.

One of the most controversial things President Roosevelt did during World War II was to open the files of the patent office to the agents of the Soviet Union, who copied hundreds of thousands of American patents with the obvious intent of using them in the Russian technology without paying anything to the inventors or their heirs for the privilege.

Notes on Trademarks

Trademarks relate to the names or symbols used on goods to indicate the manufacturer or source of the goods. These may be registered with individual states or if the goods are intended for interstate commerce the trademark may be registered with the patent office in Washington, D.C. Trademark rights will prevent others from using the same name for the same goods, but do not prevent others from making the same goods without using the trademark. For example, one could sell rolled oats for a breakfast cereal but not under the name of "Quaker Rolled Oats," because that is a registered trademark.

PROVISION

92

From Article I.8.9

The people of the states empower the Congress to set up federal courts of justice inferior to the Supreme Court.

This provision gave the federal government the responsibility and the people the RIGHT to have an adequate federal court system available for the adjudication of problems coming under federal jurisdiction.

This provision is repeated in Article III, which invests all federal judicial power in the Supreme Court "and in such inferior courts as Congress may from time to time ordain and establish." President Monroe said that "without such inferior courts IN EVERY STATE it would be difficult and might even be impossible to carry into effect the laws of the general government."[14]

As of 1982 there were 83 district or trial courts, but some of the districts are divided so that there are actually 144 divisions or places where federal district courts serve the people. In most cases, an appeal from these courts goes to one of the nine circuit courts, each of which is presided over by a Justice of the Supreme Court if he attends (which he seldom does) and is otherwise conducted by three federal judges. In many cases the decisions of the circuit courts are final. Certain other cases can go to the Supreme Court.

In Washington, D.C., there is a Court of Claims, established in 1855, in which the government consents to be sued. There is also a Court of Customs Appeal to hear cases on import duties, and a Court of Tax Appeals.

The views of some of the Founders on the judicial system are as follows:

Congress Should Have Power to Create Courts for Federal Cases

Dickinson: "If there was to be a national legislature, there ought to be a national judiciary, and that the former ought to have authority to institute the latter."[15]

Should Be Created or Abolished According to Need

Wilson and Madison: "They observed that there was a distinction between establishing such tribunals absolutely and giving a discretion to the legislature to establish or not to establish them."[16]

Lower Courts More Economical to Operate

King: "Remarked, as to the comparative expense, that the establishment of inferior tribunals would cost infinitely less than the appeals that would be prevented by them."[17]

PROVISION

93

From Article I.8.10

The people of the states empower the Congress to define and punish piracies and felonies committed on the high seas.

This provision gives Congress the exclusive RIGHT to define and punish those crimes which occur on the high seas and are therefore outside of the jurisdiction of any state.

Robbery on the high seas was one of the greatest stumbling blocks to foreign commerce for centuries. British pirates made themselves wealthy and famous preying upon the Spanish galleons freighting gold to Spain from Latin America.

By the Treaty of Ryswick in 1697 England, France, Spain, and Holland all agreed to make common war on piracy. However, Algiers continued to pepper the seas with pirates, and during Washington's administration a tribute was paid to the pirate chieftains of Algiers to permit American shipping to proceed unmolested. At the close of the War of 1812, the United States sent Commodore Decatur with a fleet of nine ships to punish the Barbary pirates. He captured their principal ships, entered the Bay of Algiers, and dictated a treaty to the humbled ruler. He then sailed to Tunis and Tripoli, where the pirates pledged good conduct from then on. Since that time the piracy clause of the Constitution has remained practically obsolete.

Felonies committed on the high seas are all crimes (involving penalties of imprisonment or death) which occur on the unenclosed waters of the ocean and on the coast outside of the low-water mark. These are crimes on the public seas over which all vessels have the right to travel, like a great international highway.

• *How extensive is federal jurisdiction on the high seas?*

Congress Can Define and Punish Only Federal Crimes

Nicholas: "Congress have power to define and punish piracies and felonies committed on the high seas, and offenses against the laws of nations; but they cannot define or prescribe the punishment of any other crime whatever without violating the Constitution."[18]

• *Why is this a suitable responsibility of the federal government?*

Laws of the States Inadequate for Crimes Outside Their Boundaries

Madison: "Felony at common law is vague. It is also defective. If the laws of the states were to prevail on this subject, the citizens of different states would be subject to different punishments for the same offense at sea. There would be neither uniformity nor stability in the law. The proper remedy for all these difficulties was to vest the power proposed by the term 'define' in the national legislature."[19]

Congress was given power to "punish piracies and felonies committed on the high seas."

PROVISION

94

From Article I.8.10

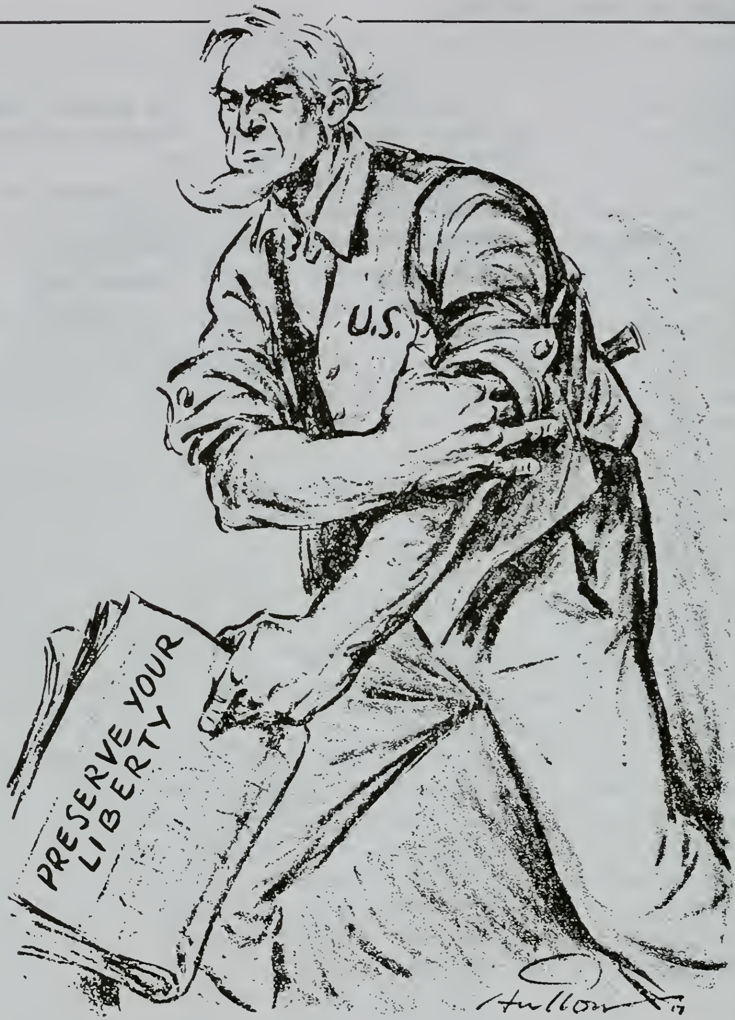
The people of the states empower the Congress to define and punish offenses against the law of nations.

This provision gives the Congress the exclusive RIGHT to determine by legislative definition the offenses committed by other countries against the United States in violation of the law of nations (commonly referred to as "international law").

Gouverneur Morris pointed out that such laws must be defined before they can be punished. He said they should be "*definable* as well as punishable, . . . the law of nations being often too vague and deficient to be a rule."[20]

Offenses against the law of nations are rules which "reason, morality, and custom" have established among civilized nations of Europe as their public law. Since the United Nations was organized there has been an attempt to bring the members under the World Court, where these laws can be enforced against the citizens of the member countries. For several reasons this is a dangerous practice. First of all, Americans could be hauled up without any protection from their own Bill of Rights. Furthermore, people are often appointed to sit on this court who are sympathetic to the Communist philosophy. The major Communist countries have never joined the World Court; however, they have urged the United States to join. When the United States agreed to have international disputes settled by this court, the Connelly Reservation provided that the United States would reserve the right to determine when the court would have jurisdiction over its American citizens. Several Presidents have tried to get the Connelly Reservation repealed as a gesture of "good faith and good will" toward the World Court concept. Congress, however, has continued to consider the World Court unsatisfactory as a fair tribunal to settle international problems because of the way it is presently structured.

1. Madison, p. 413.
2. Ibid., pp. 413–14.
3. Ibid., p. 414.
4. Ibid.
5. Ibid.
6. Ibid.
7. Elliot, 2:275.
8. Smyth, *The Writings of Benjamin Franklin,* 5:9.
9. Henry Cabot Lodge, ed., *The Works of Alexander Hamilton,* 12 vols. (New York: G. P. Putnam's Sons, 1904), 10:37.
10. Elliot, 2:275.
11. Bergh, 13:333.
12. Ibid., 11:201.
13. *Encyclopedia Americana* (1946), 9:587–88.
14. Quoted in Norton, *The Constitution of the United States,* p. 68.
15. Madison, p. 61.
16. Ibid.
17. Ibid., pp. 61–62.
18. Elliot, 3:451.
19. Madison, pp. 416–17.
20. Ibid., p. 563.


U.S.
PRESERVE YOUR LIBERTY

CHAPTER

The War Powers and the Remaining Enumerated Powers

One of the most important reasons the states united together was to promote their mutual defense. Spelling out the war powers was therefore a highly significant segment of the Constitution.

It will be noted that the entire depository of power in connection with the military was vested in the Congress, not the President. This meant that Congress had to declare war before the President could take action. An exception, of course, was allowed in the case of an unexpected invasion, authorizing the President to take emergency action as commander in chief of the armed services.

Each of the remaining enumerated powers has unique features which make this chapter an interesting and challenging part of America's political profile.

PROVISION

95

From Article I.8.11

The people of the states empower the Congress to declare war.

This provision gives Congress the exclusive RIGHT to declare war.

In the Constitutional Convention some thought the President should have the power to declare war, while others favored the Senate. It was finally decided that the profoundly serious business of declaring and conducting war should be the responsibility of the whole Congress. This power has been used in the following instances:

1. In 1812 Congress passed an act declaring war on Great Britain because of hostile acts committed by that nation against the United States.
2. In 1846 a resolution of Congress declared that a state of war existed with Mexico because of hostile acts of that country.
3. In 1898, Congress declared war on Spain over Cuba.
4. In 1917, a resolution of war was passed by Congress as a result of German attacks on the high seas, including the sinking of the *Lusitania*, in which many lives were lost.
5. On December 8, 1941, Congress adopted a resolution (with only one dissenting vote in the House) that the United States was in a "state of war" with Japan. Three days later, Germany and Italy declared war, and Congress passed a joint resolution accepting the state of war "which has been thrust upon the United States."

It should be noted that there was no declaration of war in the Korean conflict nor in the Vietnam War. These were undertaken by the President as commander in chief of the U.S. armed forces because of U.S. commitments to the regional organization (SEATO) under the United Nations. Failure of the Congress to declare war seriously complicated the administration of these wars.

Questions which came up during the debates on this provision addressed concerns such as the following:

• *Should the President, as commander in chief, have authority to declare war?*

Only Congress Can Declare War

C. Pinckney: "Observed that the President's powers did not permit him to declare war."[1]

• *Can the President repel attacks even though there has been no official declaration of war?*

President Must Repel Sudden Attacks Even Though No War Is Declared

Madison and Gerry: "Moved to insert 'declare,' striking out 'make' war, leaving to the executive the power to repel sudden attacks."[2]

Mason: "Was against giving the power of war to the executive because not safe to

be trusted with it.... He preferred 'declare' to 'make.'"[3]

• *What is implied by the "power to declare war"?*

An Exclusive Congressional Power

Jefferson: "The question of declaring war is the function equally of both houses [of Congress]."[4]

"As the executive cannot decide the question of war on the affirmative side, neither ought it to do so on the negative side by preventing the [Congress] from deliberating on the question."[5]

"If Congress are to act on the question of war, they have a right to information [from the executive]."[6]

"We had reposed great confidence in that provision of the Constitution which requires two-thirds of the [Congress] to declare war. Yet it can be entirely eluded by a majority's taking such measures as will bring on war."[7]

"The power of declaring war being with the [Congress], the executive should do nothing necessarily committing them to decide for war."[8]

• *What should be the American policy toward war?*

America's Opposition to War

Jefferson: "No country, perhaps, was ever so thoroughly against war as ours. These dispositions pervade every description of its citizens, whether in or out of office."[9]

War Unwanted but Unfeared

Jefferson: "We love and we value peace; we know its blessings from experience. We abhor the follies of war, and are not untried in its distresses and calamities. Unmeddling with the affairs of other nations, we had hoped that our distance and our dispositions would have left us free in the example and indulgence of peace with all the world.... We confide in our strength without boasting of it; we respect that of others without fearing it."[10]

One War Is Enough

Jefferson: "I have seen enough of one war never to wish to see another."[11]

War to Be Avoided If Possible

Franklin: "I would try anything, and bear anything that can be borne with safety to our just liberties, rather than engage in a war with such near relations [as the British], unless compelled to it by dire necessity in our own defense."[12]

War Caused by Wicked Men

Franklin: "I believe in my conscience that mankind are wicked enough to continue slaughtering one another as long as they can find money to pay the butchers. But of all the wars in my time, this on the part of England appears to me the wickedest, having no cause but malice against liberty, and the jealousy of commerce. And I think the crime seems likely to meet with its proper punishment; a total loss of her own liberty, and the destruction of her own commerce."[13]

Futility of Most War

Franklin: "At length we are in peace, God be praised, and long, very long, may it continue. All wars are follies, very expensive and very mischievous ones. When will mankind be convinced of this, and agree to settle their differences by arbitration? Were they to do it, even by the cast of a die, it would be better than by fighting and destroying each other."[14]

War, a Terrible Waste

Franklin: "In my opinion, *there never was a good war or a bad peace.* What vast additions to the conveniences and comforts of liv-

ing might mankind have acquired if the money spent in wars had been employed in works of public utility! What an extension of agriculture, even to the tops of our mountains; what rivers rendered navigable, or joined by canals; what bridges, aqueducts, new roads, and other public works, edifices, and improvements, rendering a ... complete paradise, might have been obtained by spending those millions in doing good which in the last war have been spent in doing mischief; in bringing misery into thousands of families, and destroying the lives of so many thousands of working people, who might have performed the useful labor!"[15]

Evils of War

Franklin: "Abstracted from the inhumanity of it, I think it wrong in point of human prudence; for whatever advantage one nation would obtain from another, whether it be part of their territory, the liberty of commerce with them, free passage on their rivers, etc., etc., it would be much cheaper to purchase such advantage with ready money than to pay the expense of acquiring it by war. An army is a devouring monster, and when you have raised it you have, in order to subsist it, not only the fair charges of pay, clothing, provisions, arms, and ammunition, with numberless other contingent and just charges to answer and satisfy, but you have all the additional knavish charges of the numerous tribe of contractors to defray, with those of every other dealer who furnishes the articles wanted for your army, and takes advantage of that want to demand exorbitant prices. It seems to me that if statesmen had a little more arithmetic, or were more accustomed to calculation, wars would be much less frequent."[16]

War Impractical

Jefferson: "Never was so much false arithmetic employed on any subject as that which has been employed to persuade nations that it is [in] their interest to go to war. Were the money which it has cost to gain, at the close of a long war, a little town or a little territory, the right to cut wood here or to catch fish there, expended in improving what they already possess, in making roads, opening rivers, building ports, improving the arts, and finding employment for their idle poor, it would render them much stronger, much wealthier and happier. This I hope will be our wisdom."[17]

War Should Be a Response to Insult

Jefferson: "I think it to our interest to punish the first insult, because an insult unpunished is the parent of many others."[18]

"It is an eternal truth that acquiescence under insult is not the way to escape war."[19]

Use Peaceful Pressures If Possible

Jefferson: "I do not believe war the most certain means of enforcing principles. Those peaceable coercions which are in the power of every nation, if undertaken in concert and in time of peace, are more likely to produce the desired effect."[20]

"If nations go to war for every degree of injury, there would never be peace on earth."[21]

PROVISION

96

From Article I.8.11

The people of the states empower the Congress to grant letters of marque and reprisal.

This provision gave the Congress the exclusive RIGHT to grant letters of marque and reprisal (authority given to an individual to wage war against the enemy).

During the Revolutionary War, when the country had no navy, it was considered expedient to give "privateers" a letter of marque and reprisal so they could fit out their privately owned ships and capture British vessels without being treated as common pirates in case they were caught. (A pirate could be strung up or executed on the spot without trial or ceremony!)

The word *marque* means to "seize," and *reprisal* implies the authority to "destroy." Since a letter authorizing a privateer to engage in such activities could provoke war or expand the dimensions of a war, such a letter should be issued only by that branch of government which has the responsibility to declare war. In the United States, that plenary power belongs to the federal government.

Since the Declaration of Paris in 1856, letters of marque and reprisal have been considered prohibited by international law. Nevertheless, in very recent years American fishing boats requested permission to arm their boats in order to drive off Soviet fishing vessels which were deliberately destroying underwater nets and other expensive fishing gear. The government did not issue letters of marque and reprisal, but since the Soviet fleet was fishing in American waters, the Coast Guard went out and forced the Russian boats into Boston Harbor, where they were each subjected to very heavy fines.

PROVISION

97

From Article I.8.11

The people of the states empower the Congress to make rules concerning that which may be captured on land or on water.

This provision gave Congress the exclusive RIGHT to regulate the capture of prisoners or the taking of land from the enemy.

Land captured by the armed forces does not automatically become part of the United States. Captured land ceases to be part of the foreign country to which it belonged, but its people cannot be counted as full citizens of the United States until the Congress has adopted the territory into equal status with the rest of the country. Puerto Rico is a case in point.

PROVISION

98

From Article I.8.12

The people of the states empower the Congress to raise money in the support of its armies, but appropriations for that purpose shall not extend beyond two years.

This provision gives the Congress the RIGHT to raise money and support for a national military force.

In the Constitutional Convention there was strong opposition to a standing army. The entire army was demobilized just as soon as the Revolutionary War was finished. The Founders did not want the President to have the power to raise an army as the British kings had repeatedly done. Furthermore, they did not want the Congress to vest the President with permanent funds to support the military. Their object was to prevent both the President and the Congress from setting up a structure which might become a military dictatorship.

The authority of Congress to raise up an army implied the authority to tax the people (not the states as under the Articles of Confederation). Consequently, when war was declared in 1917, the Congress passed in rapid succession a series of acts laying upon all the people many kinds of emergency taxes. It also provided for the issuing of liberty bonds, and set the wheels in motion for the conscription of men, the building of ships, the making of munitions, and all the other legal requirements for the effective waging of the war.

The injunction to "raise and support armies" has always been interpreted to mean defensive armies. As the Supreme Court said in 1849:

"The genius and character of our institutions are peaceful, and the power to declare war was not conferred upon Congress for the purpose of aggression or aggrandizement, but to enable the general government to vindicate by arms, if it should become necessary, its own rights and the rights of its citizens."[22]

It was also intended that these would be largely civilian armies who would be mustered out of service after each emergency. One author says:

"The army of Europe which our Fathers feared was developed through centuries of plunder by adventurous or predatory rulers, one of the inducements to hireling service in the rank and file being a share of the pillage. But the armies which have been raised in the United States have been of entirely different origin and training. They have come from homes, from generations of homekeeping and right-respecting people, and they have been anxious to return home. Within a few months after the Grand Review of the Union armies in Washington after the Civil War, over a million veterans, fully equipped, had dissolved, as it were, and disappeared in the civilian life whence they came. And after World War I, 4,800,000 men, of whom 2,084,000 had gone to France and 1,300,000 had some active service at the front, hurried gladly to their homes and left off even the military titles which they had won."[23]

The West's diplomatic mistake after World War II of building the Soviet technological machine ("in hopes she would mellow") has now allowed Russia to become so strong and aggressive that it has forced nations of the West to build military defenses to contain her. Not only has the Soviet Union not mellowed, but through conquest she has become the greatest colonial power in the history of the world. This has necessitated gigantic expenditures for defense right at a time when the Supreme Court dictum in the Butler case has opened the floodgates of the treasury for mammoth social programs and services. Those involved in the social programs complain that they could receive more if the military were not demanding so much for defense. It turns out, however, that as of 1982, for example, the military was getting only twenty-seven cents out of every dollar spent by Congress, whereas forty-two cents out of every dollar were going in direct payments to individuals under various social programs, and twelve cents were going to local governments for public works and social services. This makes a total of fifty-four cents. As shocking as military expenditures have grown through the years, the outlays for social services have grown more than twice as much. The Founders declared that having an adequate defense is a top priority when a nation is at risk.

During the debates numerous questions arose concerning the government's "war powers." Here are some of the questions the Founders addressed:

• *Why should war be the responsibility of the people's immediate representatives?*

Congress Is the Logical Place to Assign General War Powers

McKean: "Is it not necessary that the authority superintending the general concerns of the United States should have the power of raising and supporting armies? Are we, sir, to stand defenceless amidst conflicting nations? Wars are inevitable, but war cannot be declared without the consent of the immediate representatives of the people. They [declaration of war] must also *originate* [with] the representatives of the people. They must also *originate* the law which appropriates the money for the support of the army: yet they can make no appropriation for a longer term than two years."[24]

• *Why must appropriations be limited to two years?*

The House Changes Every Two Years

Dawes: "When we consider that this branch is to be elected every two years, there is great propriety in its being restrained from making any grants in support of the army for a longer space than that of their existence. If the election of this popular branch were for seven years, as in England, the men who would make the first grant, might also be the second and third, for the continuance of the army; and such an acquaintance might exist between the representatives in Congress and the leaders of the army as might be unfavorable to liberty. But the wisdom of the late Convention has avoided this difficulty. The army must expire of itself in two years after it shall be raised, unless renewed by representatives, who, at that time, will have just come fresh from the body of the people. It will share the same fate as that of a temporary law, which dies at the time

mentioned in the act itself, unless revived by some future legislature."[25]

Military Appropriations Permitted Every Two Years but Not Required

Sherman: "Remarked that the appropriations were permitted only, not required to be for two years. As the legislature is to be biennially elected, it would be inconvenient to require appropriations to be for one year, as there might be no session within the time necessary to renew them."[26]

Two Years Is Sufficient but One Year Would Be Too Short

Iredell: "Though Congress are to have the power of raising and supporting armies, yet they cannot appropriate money for that purpose for a longer time than two years.... But at the end of the second year from the first choice, the whole House of Representatives must be rechosen, and also one-third of the Senate. The people, being inflamed with the abuse of power of the old members, would turn them out with indignation.... In two years, a system of tyranny certainly could not succeed in the face of the whole people; and the appropriation could not be with any safety for less than that period. If it depended on an annual vote, the consequence might be, that, at a critical period, when military operations were necessary, the troops would not know whether they were entitled to pay or not, and could not safely act till they knew that the annual vote had passed."[27]

- *Can the government raise up an army only after hostilities break out?*

Must Have a Creditable Standing Army Even in Peacetime

Wilson: "Ought Congress to be deprived of power to prepare for the defence and safety of our country? Ought they to be restricted from arming, until they divulge the motive which induced them to arm? I believe the *power* of raising and keeping up an army, in time of peace, is essential to every government. No government can secure its citizens against dangers, internal and external, without possessing it, and sometimes carrying it into execution. I confess it is a power in the exercise of which all wise and moderate governments will be as prudent and forbearing as possible. When we consider the situation of the United States, we must be satisfied that it will be necessary to keep up some troops for the protection of the western frontiers, and to secure our interest in the internal navigation of that country. It will be not only necessary, but it will be economical on the great scale. Our enemies, finding us invulnerable, will not attack us; and we shall thus prevent the occasion for larger standing armies."[28]

We Would Be Courting War Not to Have Some Military in Peacetime

Gore: "Is America to wait until she is attacked, before she attempts a preparation at defense? This would certainly be unwise; it would be courting our enemies to make war upon us."[29]

Lack of a Peacetime Army Would Invite a Sneak Attack

Phillips: "Mention is made that Congress ought to be restricted of the power to keep an army except in time of war. I apprehend that great mischief would ensue from such a restriction. Let us take means to prevent war, by granting to Congress the power of raising an army. If a declaration of war is made against this country, and the enemy's army is coming

against us, before Congress could collect the means to withstand this enemy, they would penetrate into the bowels of our country, and every thing dear to us would be gone in a moment."[30]

Circumstances Warrant a Contingent of Peacetime Military

Hamilton: "Restraints upon the discretion of the legislature in respect to military establishments in time of peace would be improper to be imposed....

"On one side of us, and stretching far into our rear, are growing settlements subject to the dominion of Britain. On the other side, and extending to meet the British settlements, are colonies and establishments subject to the dominion of Spain. This situation and the vicinity of the West India Islands, belonging to these two powers, create between them, in respect to their American possessions and in relation to us, a common interest. The savage tribes on our Western Frontier ought to be regarded as our natural enemies, their natural allies, because they have most to fear from us, and most to hope from them. The improvements in the art of navigation have, as to the facility of communication, rendered distant nations, in a great measure, neighbors....

"Previous to the Revolution, and ever since the peace, there has been a constant necessity for keeping small garrisons on our Western Frontier. No person can doubt that these will continue to be indispensable, if it should only be against the ravages and depredations of the Indians. These garrisons must either be furnished by occasional detachments from the militia, or by permanent corps in the pay of the government. The first is impracticable; and if practicable, would be pernicious. The militia would not long, if at all, submit to be dragged from their occupations and families to perform that most disagreeable duty in times of profound peace. And if they could be prevailed upon or compelled to do it, the increased expense of a frequent rotation of service, and the loss of labor and disconcertion of the industrious pursuits of individuals, would form conclusive objections to the scheme. It would be as burdensome and injurious to the public as ruinous to private citizens. The latter resource of permanent corps in the pay of the government amounts to a standing army in time of peace.... Here is a simple view of the subject that shows us at once the impropriety of a constitutional interdiction of such establishments, and the necessity of leaving the matter to the discretion and prudence of the legislature....

"If we mean to be a commercial people, or even to be secure on our Atlantic side, we must endeavor, as soon as possible, to have a navy. To this purpose there must be dockyards and arsenals; and for the defense of these, fortifications, and probably garrisons."[31]

• *Wouldn't the state militia be sufficient without a regular federal military?*

Not Sufficient to Rely Merely on State Militia

Corbin: "If some of the community are exclusively inured to its defense, and the rest attend to agriculture, the consequence will be, that the acts of war and defense, and of cultivating the soil, will be understood. Agriculture will flourish, and military discipline will be perfect. If, on the contrary, our defense be solely intrusted to militia, ignorance of arms and negligence of farming will ensue.... If the inhabitants be called out on sudden emergencies of

war, their crops, the means of their subsistence, may be destroyed by it."[32]

Amateur Militia Inadequate

Hamilton: "If ... it should be resolved to extend the prohibition to the *raising* of armies in time of peace, the United States would then exhibit the most extraordinary spectacle which the world has yet seen — that of a nation incapacitated by its Constitution to prepare for defense before it was actually invaded.... We must receive the blow before we could even prepare to return it. All that kind of policy by which nations anticipate distant danger and meet the gathering storm must be abstained from, as contrary to the genuine maxims of a free government....

"The steady operations of war against a regular and disciplined army can only be successfully conducted by a force of the same kind. Considerations of economy, not less than of stability and vigor, confirm this position. The American militia, in the course of the late war, have, by their valor on numerous occasions, erected eternal monuments to their fame; but the bravest of them feel and know that the liberty of their country could not have been established by their efforts alone, however great and valuable they were. War, like most other things, is a science to be acquired and perfected by diligence, by perseverance, by time, and by practice."[33]

A Standing Army Is a Dangerous but Necessary Provision

Madison: "The liberties of Rome proved the final victim to her military triumphs; and that the liberties of Europe, as far as they ever existed, have, with few exceptions, been the price of her military establishments. A standing force ... is a dangerous...necessary, provision. On the smallest scale it has its inconveniences. On an extensive scale its consequences may be fatal....

"The Union itself...destroys every pretext for a military establishment which could be dangerous. America united, with a handful of troops, or without a single soldier, exhibits a more forbidding posture to foreign ambition than America disunited, with a hundred thousand veterans ready for combat.... A dangerous establishment can never be necessary or plausible, so long as they continue a united people. But let it never for a moment be forgotten that they are indebted for this advantage to the Union alone. The moment of its dissolution will be the date of a new order of things....

"Next to the effectual establishment of the Union, the best possible precaution against danger from standing armies is a limitation of the term for which revenue may be appropriated to their support. This precaution the Constitution has prudently added."[34]

- *Could the President raise an army on his own?*

Power Lodged in the Legislature, Not the Executive

Hamilton: "The whole power of raising armies was lodged in the *legislature*, not in the *executive;* that this legislature was to be a popular body, consisting of the representatives of the people periodically elected.... There was to be found in respect to this object an important qualification even of the legislative discretion in that clause which forbids the appropriation of money for the support of an army for any longer period than two years — a precaution which upon a nearer view of it will appear to be a great and real security against the keeping up of troops without evident necessity."[35]

PROVISION

99

From Article I.8.13

The people of the states empower the Congress to provide and maintain a navy.

This provision not only gave the Congress the RIGHT to set up a navy, but implied a mandate that it should be "provided."

During the Revolutionary War, Washington lost New York because he had no navy. In fact, until the French arrived with its naval forces, the Continental Army of the United States was at the mercy of the naval blockade which the British maintained along the entire length of the Atlantic seaboard. Franklin helped John Paul Jones launch a tiny flotilla from France (where Franklin was American minister), and by sailing along the northeast coast of England, Captain Jones had the triumph of his life. He lost his own ship but conquered and boarded the *Serapis* with his own sinking vessel lashed to it.

John Paul Jones gave the U.S. Navy a great tradition, but the role of the Navy in the Revolutionary War was a minor one. The writers of the Constitution were determined that in future wars the U.S. Navy would be one of the foremost bastions of defense.

PROVISION

100

From Article I.8.14

The people of the states empower the Congress to make rules and regulations for the governing of the land and naval forces.

This provision gave the Congress the RIGHT to dictate the specific rules and regulations under which the land and naval forces of the United States would operate.

This is a very important provision. It has always been fundamental to the American philosophy that the military is subordinate to the civil authorities. The Constitution made the President the commander in chief, but it gave the Congress the power to lay down the regulations and restrictions under which he would be required to operate.

Since the next two clauses have to do with raising up a militia by each of the states, it was important to establish that the federal government is to lay down the rules and regulations by which all military personnel will be governed. This is the only way uniformity of discipline could be maintained when the militias from the various states are brought together as part of the national military forces.

PROVISION 101

From Article I.8.15

The people of the states empower the Congress to call forth the state militia when needed to: (1) execute federal laws, (2) suppress insurrections in the states, or (3) repel invasions from abroad.

This provision gave the Congress the RIGHT to order up the state militias singly or en masse to accomplish any of the three purposes specified in this provision.

It will be noted that the calling forth of the various state militias is not within the power of the President but must be done by the Congress. Even the Congress is restricted to three situations:

1. To execute the laws of the union—the requirements of the Constitution, the acts of Congress, and the treaties.
2. To suppress insurrections—which are open and active opposition to the execution of the law.
3. To repel invasions by an enemy intent on military conquest or the overthrow of the government.

Here again, both the President (who is not granted authority to call up the militia) and the Congress (which is limited to the circumstances when the militia may be called) are prevented from achieving an armed dictatorship.

PROVISION 102

From Article I.8.16

The people of the states empower the Congress to provide for the organizing, arming, and training (disciplining) of the state militia and shall have authority to govern (direct and control) any of the state militia which are called into the service of the United States.

This provision gives the Congress the RIGHT to equip, arm, train, and control the state militia whenever any of them are called into the service of the United States.

The militia of a state is actually the official army of the state. It consists of all able-bodied male citizens who are between the ages of eighteen and forty-five and are not already members of the armed forces of the United States. Under the National Defense Act of 1916, the Congress organized the militia of each state into special reserve units of the Army, Navy, and eventually the Coast

Guard, Marine Corps, and Air Force. These constitute the National Guard or the organized militia of the state. All other men between the ages of eighteen and forty-five inclusive are members of the unorganized militia. They are subject to call by both the governor of the state and the Congress of the United States if circumstances warrant it.

Here are the answers to some of the questions which were raised during the debate:

• *In the final analysis, what constitutes the militia of a state?*

The State Militia Constitute the Whole People

Mason: "I ask, who are the militia? They consist now of the whole people, except a few public officers."[36]

Corbin: "Who are the militia? Are we not militia?"[37]

Randolph: "They are the bulwarks of our liberties."[38]

• *Why should the federal government train and equip state militias?*

Congress Must Have Access to Militias Uniformly Trained and Equipped

Wilson: "It is said that Congress should not possess the power of calling out the militia, to execute the laws of the Union, suppress insurrections, and repel invasions; nor the President have the command of them when called out for such purposes.

"I believe any gentlemen, who possess military experience, will inform you that men without a uniformity of arms, accoutrements, and discipline, are no more than a mob in a camp; that, in the field, instead of assisting, they interfere with one another. If a soldier drops his musket, and his companion, unfurnished with one, takes it up, it is of no service, because his cartridges do not fit it. By means of this system, a uniformity of arms and discipline will prevail throughout the United States. . . .

"The militia formed under this system, and trained by several states, will be such a bulwark of internal strength, as to prevent the attacks of foreign enemies."[39]

Responsibility for Strong State Militia Is Concurrent Between State and Federal Governments

Nicholas: "The power of arming them is concurrent between the general and state governments; for the power of arming them rested in the state governments before; and although the power be given to the general government, yet it is not given exclusively."[40]

• *What if the federal government fails to do so?*

The States Are Able to Arm and Train Their Militias If Congress Neglects to Do So

Randolph: "Should Congress neglect to arm or discipline the militia, the states are fully possessed of the power of doing it; for they are restrained from it by no part of the Constitution."[41]

• *What is the primary function of the state militias?*

State Militias Necessary to Guarantee Law and Order

Madison: "If resistance should be made to the execution of the laws . . . it ought to be

overcome. This could be done only in two ways—either by regular force or by the people. By one or the other it must unquestionably be done. If insurrections should arise, or invasions should take place, the people ought unquestionably to be employed, to suppress and repel them, rather than a standing army. The best way to do these things was to put the militia on a good and sure footing, and enable the government to make use of their services when necessary."[42]

• *Is it an abuse of power for the federal government to utilize the state militias?*

The States Lose Nothing by Making Their Militia Available to Congress

Madison: "I cannot conceive that this Constitution, by giving the general government the power of arming the militia, takes away from the state governments. The power is concurrent, and not exclusive....

"The states are to have the authority of training the militia according to the congressional discipline; and of governing them at all times when not in the service of the Union. Congress is to govern such part of them as may be employed in the actual service of the United States; and such part only can be subject to martial law."[43]

Militia Under State Control Until Called Up

Madison: "The state governments might do what they thought proper with the militia, when they are not in the actual service of the United States. They might make use of them to suppress insurrections, quell riots, etc., and call on the general government for the militia of any other state, to aid them, if necessary."[44]

State Militias Can Be Called Up in Only Three Situations

Nicholas: "Congress is to ... provide for calling them forth, to execute the laws of the Union, suppress insurrections, and repel invasions. These powers only amount to this—that they can only call them forth in these three cases, and that they can only govern such part of them as may be in the actual service of the United States. This causes a sufficient security that they will not be under martial law but when in actual service.... The President is to command. But the regulation of the army and navy is given to Congress. Our representatives will be a powerful check here.... We ought to part with the power to use the militia to somebody. To whom? Ought we not to part with it for the general defense? If you give it not to Congress, it may be denied by the states. If you withhold it, you render a standing army absolutely necessary....

"There is a great difference between having the power in three cases, and in all cases. They cannot call them forth for any other purpose than to execute the laws, suppress insurrections, and repel invasions....

"The civil officer is to execute the laws on all occasions; and, if he be resisted, this auxiliary power is given to Congress of calling forth the militia to execute them, when it should be found absolutely necessary.... The President is not to have this power. God forbid we should ever see a public man in this country who should have this power. Congress only are to have the power of calling forth the militia."[45]

The Militias Constitute an Auxiliary Source of Support

Hamilton: "The militia . . . ought always to be counted upon as a valuable and powerful auxiliary."[46]

- *How can the whole state be trained?*

State Militias Should Be Structured Around a Select, Well-Trained National Guard

Hamilton: "Uniformity in the organization and discipline of the militia would be attended with the most beneficial effects, whenever they were called into service for the public defense. It would enable them to discharge the duties of the camp and of the field with mutual intelligence and concert. . . .

"Uniformity can only be accomplished by confiding the regulation of the militia to the direction of the national authority. . . .

"If a well-regulated militia be the most natural defense of a free country, it ought certainly to be under the regulation and at the disposal of that body which is constituted the guardian of the national security. . . . If the federal government can command the aid of the militia in those emergencies which call for the military arm in support of the civil magistrate, it can the better dispense with the employment of a different kind of force. . . . To render an army unnecessary will be a more certain method of preventing its existence than a thousand prohibitions upon paper. . . .

"The project of disciplining all the militia of the United States is as futile as it would be injurious if it were capable of being carried into execution. . . . To oblige the great body of the yeomanry and of the other classes of citizens to be under arms for the purpose of going through military exercises and evolutions, as often as might be necessary to acquire the degree of perfection which would entitle them to the character of a well-regulated militia, would be a real grievance to the people and a serious public inconvenience and loss. . . . Little more can reasonably be aimed at with respect to the people at large than to have them properly armed and equipped; and in order to see that this be not neglected, it will be necessary to assemble them once or twice in the course of a year. . . .

"The attention of the government ought particularly to be directed to the formation of *a select corps of moderate extent,* upon such principles as will really fit them for service in case of need. By thus circumscribing the plan, it will be possible to have an excellent body of well-trained militia ready to take the field whenever the defense of the State shall require it. This will not only lessen the call for military establishments, but if circumstances should at any time oblige the government to form an army of any magnitude, that army can never be formidable to the liberties of the people while there is a large body of citizens, little if at all inferior to them in discipline and the use of arms, who stand ready to defend their own rights and those of their fellow-citizens. This appears to me the only substitute that can be devised for a standing army, and the best possible security against it, if it should exist. . . .

"Where in the name of common sense are our fears to end if we may not trust our sons, our brothers, our neighbors, our fellow-citizens? What shadow of danger can there be from men who are daily mingling with the rest of their countrymen and who participate with them in the same feelings, sentiments, habits, and

interests? What reasonable cause of apprehension can be inferred from a power in the Union to prescribe regulations for the militia and to command its services when necessary, while the particular States are to have the *sole and exclusive appointment of the officers*? If it were possible seriously to indulge a jealousy of the militia upon any conceivable establishment under the federal government, the circumstance of the officers being in the appointment of the States ought at once to extinguish it. There can be no doubt that this circumstance will always secure to them a preponderating influence over the militia.

"Whither would the militia, irritated by being called upon to undertake a distant and distressing expedition for the purpose of riveting the chains of slavery upon a part of their countrymen, direct their course, but to the seat of the tyrants, who had meditated so foolish as well as so wicked a project to crush them in their imagined intrenchments of power, and to make them an example of the just vengeance of an abused and incensed people?

"In times of insurrection, or invasion, it would be natural and proper that the militia of the neighboring State should be marched into another, to resist a common enemy, or to guard the republic against the violence of faction or sedition.... This mutual succor is, indeed, a principal end of our political association."[47]

PROVISION 103

From Article I.8.16

The people reserve to the states the power to appoint the officers of their state militia and carry out the training and discipline in each of the states as prescribed by Congress.

This provision gives the states the RIGHT to appoint their own officers in the state militia and provide the discipline and training of the militia as prescribed by Congress.

There was great concern among the states lest the federal military authorities use their power to make encroachments on the states and their militia. The Founders were sensitive to this and therefore provided in the Constitution that the states would have exclusive authority to do two things:

1. Appoint their own officers in charge of the militia.
2. Have charge of the training program prescribed by Congress.

It was understood, of course, that if the state militias were called up in a national crisis, they would serve under superior officers representing the United States military services. However, their own officers would continue to function at their established level of authority under the federal officers appointed by the President as commander in chief.

PROVISION

104

From Article I.8.17

The people of the states empower the Congress to have exclusive jurisdiction and lawmaking power over a designated district (not to exceed ten miles square) which shall be the seat of government for the United States.

This provision gives the Congress the RIGHT to set up a ten-square-mile restricted area for the seat of government, to be exclusively under the control of Congress.

This clause may have originated from Congress's unhappy experience of being virtually evicted from Philadelphia in 1783 when members of the Continental Army mobbed them, forcing the Congress to flee to Princeton, Annapolis, Trenton, and finally New York, because local authorities did not adequately protect them. Furthermore, it was felt that the capital should not be in the same city as the capital of a state, or in a large commercial center likely to be heavily populated.

The District of Columbia was selected during Washington's administration as the nation's capital. Two bills were introduced which divided the Congress. One bill would have allowed the national government to assume the debts of the various states incurred during the Revolutionary War. States such as Virginia, which had paid off their state debts to a large extent, opposed the federal assumption of delinquent state debts. Why, Virginia asked, should she pay her own debts plus a portion of the debts of others?

At the same time, many of these delinquent states wanted the national capital to be in the north (Philadelphia or New York). Virginia bargained to support the assumption bill (assuming the debts of the states) if the new national capital were placed on the Potomac River. Jefferson, as Secretary of State, undertook to get enough votes from the South to support the assumption bill, while Hamilton, as Secretary of Treasury, rallied votes to put the national capital on the Potomac.

In 1788-89 Maryland ceded to the nation sixty square miles east of the Potomac, and Virginia ceded thirty square miles on the west. In 1846 Congress decided to give the territory on the west back to Virginia. The seat of government was Philadelphia from 1790 to 1800, when it was moved to Washington, D.C.

Here are the questions which the Founders answered during the debates:

• *What are some of the reasons why the seat of government should be established in some permanent location?*

Congress Should Have a Permanent, Secure Location

King: "Said, in reply to the inquiry respecting a federal town, that there was now no place for Congress to reside in, and that it was necessary that they should have a permanent residence, where to establish proper archives, in which they may deposit treaties, state papers, deeds of cession, etc."[48]

• *What special advantage would this be to Congress?*

Congress Must Not Be Subject to Outrage of Local Citizens

Davis: "Said it was necessary that Congress should have a permanent residence.... He asked, 'Would Massachusetts, or any other state, wish to give to New York, or the state in which Congress shall sit, the power to influence the proceedings of that body, which was to act for the benefit of the whole, by leaving them liable to the outrage of the citizens of such states?'"[49]

A Federal Town Would Protect Congress from Insult

Strong: "Said, every gentleman must think that the erection of a federal town was necessary, wherein Congress might remain protected from insult. A few years ago...Congress had to remove, because they were not protected by the authority of the state in which they were then sitting."[50]

• *Cannot this be provided by the individual states?*

Individual States Cannot Provide Such Protection

Madison: "How could the general government be guarded from the undue influence of particular states, or from insults, without such exclusive power? If it were at the pleasure of a particular state to control the session and deliberations of Congress, would they be secure from insults, or the influence of such state?"[51]

Individual States Failed to Protect Congress in the Past

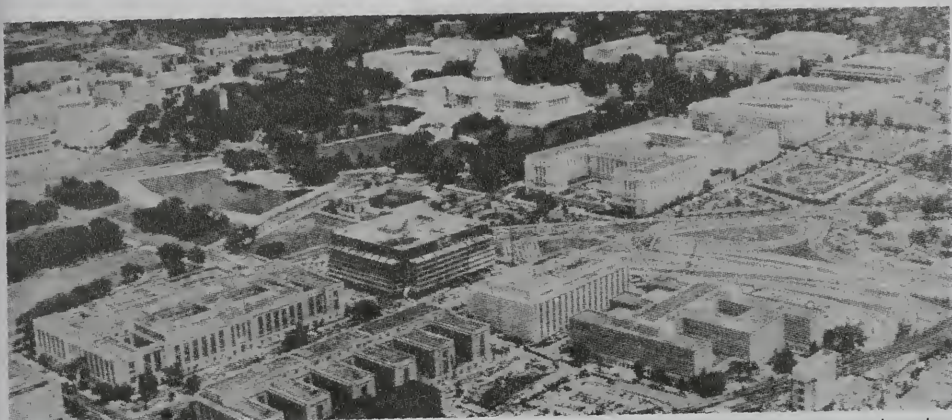
Iredell: "What would be the consequence if the seat of the government of the United States, with all the archives of America, was in the power of any one particular state? Would not this be most unsafe and humiliating? Do we not all remember that, in the year 1783, a band of soldiers went and insulted Congress? The sovereignty of the United States was treated with indignity. They applied for protection to the state they resided in, but could obtain none. It is hoped such a disgraceful scene will never happen again; but that, for the future, the national government will be able to protect itself."[52]

National Legislature Should Not Be Vulnerable to Pressures of a Host State

Madison: "Without it not only the public authority might be insulted and its proceedings interrupted with impunity, but a dependence of the members of the general government on the State comprehending the seat of the government for protection in the exercise of their duty might bring on the national councils an imputation of awe or influence equally dishonorable to the government and dissatisfactory to the other members of the Confederacy.... The inhabitants will find sufficient inducements of interest to become willing parties to the cession; as they will have had their voice in the election of the government which is to exercise authority over them; as a municipal legislature for local purposes, derived from their own suffrages, will of course be allowed them."[53]

Editorial Note — Is Washington, D.C., Losing Status As the National Capital?

Between 1775 and 1789 the Congress of the United States tried to find a haven of security in Philadelphia, Baltimore, Philadelphia again, Lancaster, York, Philadel-



George Washington himself selected the site for Washington, D.C. John Adams was the first President to set up residence there.

phia again, Princeton, Annapolis, and finally New York. After it was decided that a city should be built on the banks of the Potomac away from any metropolitan center, George Washington himself picked out the site. Congress met in Washington, D.C., for the first time on November 21, 1800—anniversary of the signing of the Mayflower Compact. John Adams was the first President to set up residence in the new capital.

For most of the nation's history, Congress governed the District of Columbia. However, a strong campaign to "democratize" the nation's capital finally resulted in a municipal government being set up during the 1960s which elected its own officers independent of Congress and began making its own laws. Before long the city had developed one of the highest crime rates in the nation. One violent riot paralyzed the city's downtown section for several days.

It was also in 1961 that the Twenty-third Amendment was ratified, which altered the Constitution by allowing the District of Columbia to have three electoral votes for the office of President and Vice President. In 1971, a non-voting delegate from the District of Columbia was seated in the House of Representatives. In August 1978, Congress passed a constitutional amendment providing for one representative and two Senators for the District of Columbia, just as though it were another state. This proposed amendment failed because it was never ratified by more than a few states by the time the seven-year deadline expired. Now a new amendment has been introduced which would actually make the District of Columbia a state. It is proposed to call it the state of New Columbia.

Certainly the residents of the District of Columbia are entitled to exercise their franchise, but this could have been readily accomplished by allowing them to vote with the citizens of Maryland, to which the District of Columbia once belonged.

There is deep concern in many quarters of the nation that Congress has abdicated its responsibility under the Constitution to keep the site of the nation's capital secure and under the administrative control of the people's representatives. The original intent was to have the city belong to the nation, not the residents of the District of Columbia.

PROVISION

105

From Article I.8.17

The people of the states empower Congress to exercise complete jurisdiction and authority over all lands or facilities purchased within a state, providing it shall be with the consent of the legislature of that state. Such lands shall be used for the "erection of forts, magazines, arsenals, dock yards, and other needful buildings."

This provision gives the Congress the RIGHT to exercise complete jurisdiction over lands or facilities which it has purchased with the consent of the state legislature for the purposes specified.

It would also appear that this provision gives each state the RIGHT to assume title to all lands within its boundaries which the federal government is not using for the purposes specified in this section.

But what about new states coming into the Union where most of the territory consists of federal public lands? The Northwest Ordinance of 1787 declared that all new states would come into the Union on a basis of complete equality or equal footing with the original thirteen states. Therefore it was assumed that as soon as a new territory was granted statehood, the people of that state would acquire title to every acre of land other than a very small percentage granted to the federal government for the "erection of forts, magazines, arsenals, dock yards, and other needful buildings."

But Congress did not allow this to happen. When Ohio was admitted into the Union in 1803, the government retained title to all of the public lands but assured the people that Ohio would acquire jurisdiction as soon as these lands could be sold to help pay off the national debt. This, then, became the established policy for new states:

1. The federal government would retain all ungranted public lands.

2. The government guaranteed that it would dispose of these lands as soon as possible.

3. The new state would acquire jurisdiction over these lands as fast as they were sold to private individuals.

As a result of this policy, all of the states east of the Mississippi, and those included in the Louisiana Purchase, eventually acquired all but a very small percentage of the land lying within their state boundaries.

However, when the territory of the western states was acquired from Mexico, Congress radically digressed from the Constitution by virtually eliminating the sale or disposal of federal lands. The general policy was to permanently retain major portions of each of the western states for purposes not listed in the Constitution. This policy resulted in the government becoming the permanent owner and manager of over 35 percent of the American landmass. At the present time, vast areas within the boundaries of these states are permanently designated as part

of the federal domain for national forests, national parks, national monuments, coal and oil reserves, lands leased for profit to ranchers or farmers, and huge tracts of land with valuable resources completely locked up as "wilderness areas."

Here is the amount of land in each of the western states still held by the federal government:

Arizona	45%	New Mexico	35%
California	45%	Oregon	52%
Colorado	36%	Utah	66%
Idaho	64%	Washington	30%
Montana	30%	Wyoming	48%
Nevada	87%		

The most flagrant example of all, however, is found in the conditions under which Alaska was admitted to the Union in 1959. The people were only allowed to occupy approximately 4 percent of their state.

Of course, the government should have exclusive jurisdiction over those lands acquired for the purposes listed in the Constitution. As Madison stated:

"The public money expended on such places, and the public property deposited in them, require that they should be exempt from the authority of the particular State. Nor would it be proper for the places on which the security of the entire Union may depend to be in any degree dependent on a particular member of it. All objections and scruples are here also obviated by *requiring the concurrence of the States concerned in every such establishment.*"[54]

It is obvious that the federal government is currently occupying millions of acres within certain states without the "concurrence" of those states.

PROVISION

106

From Article I.8.18

The people of the states empower the Congress to pass any laws which shall be "necessary and proper" to carry out the enumerated powers designated above, or to carry out any other powers vested by this Constitution in the government of the United States, or in any department or offices thereof.

This provision, known as the "elastic clause" or the "necessary and proper clause," gives the Congress the RIGHT to pass any other laws needed to implement the provisions of this Constitution.

The Founders were a little nervous about the "necessary and proper" clause. Nevertheless, they made the following responses to various questions in hopes that there would be no question concerning their intent.

• *Does this clause add to the powers of Congress?*

It Does Not Delegate Additional Powers

Nicholas: "The Constitution had enumer-

ated all the powers which the general government should have, but did not say how they were to be exercised. It therefore, in this clause, tells how they shall be exercised. Does this give any new power? I say not. This clause only enables them to carry into execution the powers given to them, but gives them no additional power."[55]

This Clause Merely Facilitates Implementation

Wilson: "It is urged, as a general objection to this system, that 'the powers of Congress are unlimited and undefined, and that they will be the judges, in all cases, of what is necessary and proper for them to do.' To bring this subject to your view, I need do no more than point to the words in the Constitution, beginning at the 8th section, article lst. 'The Congress (it says) shall have power,' etc. I need not read over the words, but I leave it to every gentleman to say whether the powers are not as accurately and minutely defined, as can be well done on the same subject, in the same language.... The concluding clause, with which so much fault has been found, gives no more or other powers; nor does it, in any degree, go beyond the particular enumeration; for, when it is said that Congress shall have power to make all laws which shall be necessary and proper, those words are limited and defined by the following, 'for carrying into execution the foregoing powers.' It is saying no more than that the powers we have already particularly given, shall be effectually carried into execution."[56]

• *What limits the powers of Congress so this clause will not be misinterpreted?*

Authority of Congress Limited to the Enumerated Powers

Madison: "[This clause] only extended to the enumerated powers. Should Congress attempt to extend it to any power not enumerated, it would not be warranted by the clause."[57]

Enumerating Powers Prohibits Congress from Assuming Others

MacLaine: "The powers of Congress are limited and enumerated. We say we have given them those powers, but we do not say we have given them more. We retain all those rights which we have not given away to the general government.... If they can assume powers not enumerated, there was no occasion for enumerating any powers...if we had all power before, and give away but a part, we still retain the rest. It is as plain a thing as possibly can be, that Congress can have no power but what we expressly give them. There is an express clause which, however, disingenuously it has been perverted from its true meaning, clearly demonstrates that they are confined to those powers which are given them. This clause enables them to...make laws to carry into execution *all the powers vested* by this Constitution; consequently, they can make no laws to execute any other power. This clause gives no new power, but declares that those already given are to be executed by proper laws."[58]

This Clause Must Be Used Only to Execute One of the Enumerated Powers

Pendleton: "I understand that clause as not going a single step beyond the delegated powers. What can it act upon? From power given by this Constitution. If they should be about to pass a law in consequence of this clause, they must pursue

some of the delegated powers, but can by no means depart from them, or arrogate any new powers, for the plain language of the clause is, to give them power to pass laws in order to give effect to the delegated powers."[59]

• *Why is this clause even necessary?*

This Clause Necessary to Make Enumerated Powers Effectual

Wilson: "Sir, I think there is another subject with regard to which this Constitution deserves approbation. I mean the accuracy with which the *line is drawn* between the powers of the *general government* and those of the *particular state governments*.... But it is not pretended that the line is drawn with mathematical precision; the inaccuracy of language must, to a certain degree, prevent the accomplishment of such a desire. Whoever views the matter in a true light, will see that the powers are as minutely enumerated and defined as was possible, and will also discover that the general clause, against which so much exception is taken, is nothing more than what was necessary to render effectual the particular powers that are granted."[60]

It Is a Question of Means

Wilson: "It is meant that they shall have the power of carrying into effect the laws which they shall make under the powers vested in them by this Constitution."[61]

Powers to Act Must Be Commensurate with Responsibility Assigned

Hamilton: "Shall the Union be constituted the guardian of the common safety? Are fleets and armies and revenues necessary to this purpose? The government of the Union must be empowered to pass all laws, and to make all regulations which have relation to them. The same must be the case in respect to commerce, and to every other matter to which its jurisdiction is permitted to extend.... Not to confer in each case a degree of power commensurate to the end would be to violate the most obvious rules of prudence and propriety, and improvidently to trust the great interests of the nation to hands which are disabled from managing them with vigor and success.... It is both unwise and dangerous to deny the federal government an unconfined authority in respect to all those objects which are intrusted to its management.... The POWERS are not too extensive for the OBJECTS of federal adminstration, or, in other words, for the management of our national interests."[62]

Congress Must Have This Authority

Hamilton: "What is a power but the ability or faculty of doing a thing? What is the ability to do a thing but the power of employing the *means* necessary to its execution? What is a legislative power but a power of making laws? What are the *means* to execute a legislative power but laws? What is the power of laying and collecting taxes but a *legislative power,* or a power of *making laws* to lay and collect taxes? What the proper means of executing such a power but *necessary* and *proper* laws? ...

"It conducts us to this palpable truth that a power to lay and collect taxes must be a power to pass all laws *necessary* and *proper* for the execution of that power.... The national legislature to whom the power of laying and collecting taxes had been previously given might, in the execution of that power, pass all laws *necessary* and *proper* to carry it into effect.... The

same process will lead to the same result in relation to all other powers declared in the Constitution. And it is *expressly* to execute these powers that the sweeping clause, as it has been affectedly called, authorizes the national legislature to pass all *necessary* and *proper* laws. If there is anything exceptionable, it must be sought for in the specific powers upon which this general declaration is predicated....

"But it may be again asked, 'Who is to judge of the *necessity* and *propriety* of the laws to be passed for executing the powers of the Union?' The national government, like every other, must judge, in the first instance, of the proper exercise of its powers, and its constituents in the last. If the federal government should overpass the just bounds of its authority and make a tyrannical use of its powers, the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify. The propriety of a law, in a constitutional light, must always be determined by the nature of the powers upon which it is founded."[63]

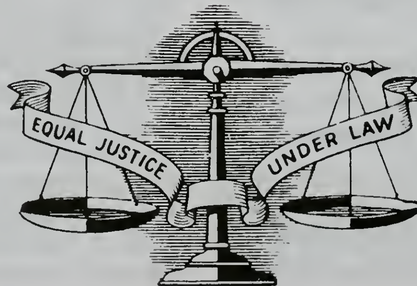
Without This Clause the Constitution Is a Dead Letter

Madison: "Without the *substance* of this power, the whole Constitution would be a dead letter....

"Had the convention attempted a positive enumeration of the powers necessary and proper for carrying their other powers into effect, the attempt would have involved a complete digest of laws on every subject to which the Constitution relates....

"No axiom is more clearly established in law, or in reason, than that wherever the end is required, the means are authorized; wherever a general power to do a thing is given, every particular power necessary for doing it is included....

"If it be asked what is to be the consequence, in case the Congress shall misconstrue this part of the Constitution and exercise powers not warranted by its true means, I answer the same as if they should misconstrue or enlarge any other power vested in them; as if the general power had been reduced to particulars, and any one of them were to be violated.... In the last resort a remedy must be obtained from the people, who can, by the election of more faithful representatives, annul the acts of the usurpers. These [candidates for office] will be ever ready to mark the innovation, to sound the alarm to the people, and to exert their local influence in effecting a change of federal representatives."[64]



1. Elliot, 4:287.
2. Madison, p. 418.
3. Ibid., p. 419.
4. Ford, 1:206.
5. Ibid., 6:192.
6. Ibid., 7:221.
7. Ibid., p. 222.
8. Ibid., 9:100.
9. Ibid., p. 217.
10. Ibid., p. 337.
11. Ibid., p. 505.
12. Smyth, *The Writings of Benjamin Franklin*, 6:312.
13. Ibid., 7:18.
14. Ibid., 9:12.
15. Ibid., p. 74.
16. Ibid., p. 612.
17. Bergh, 2:240.
18. Ford, 4:89.
19. Ibid., 7:31.
20. Ibid., 8:91.
21. Bergh, 11:282.
22. Norton, *The Constitution of the United States*, p. 72.
23. Ibid., pp. 75–76.
24. Elliot, 2:636–37.
25. Ibid., p. 98.
26. Madison, p. 512.
27. Elliot, 4:97–98.
28. Ibid., 2:521.
29. Ibid., p. 66.
30. Ibid., p. 68.
31. *Federalist Papers*, No. 24.
32. Elliot, 3:113.
33. *Federalist Papers*, No. 25.
34. Ibid., No. 41.
35. Ibid., No. 24.
36. Elliot, 2:425.
37. Ibid., 3:113.
38. Ibid., p. 400.
39. Ibid., 2:521–22
40. Ibid., 3:391.
41. Ibid., p. 206.
42. Ibid., 2:378.
43. Ibid., 3:382–83.
44. Ibid., p. 416.
45. Ibid., pp. 391–92.
46. *Federalist Papers*, No. 26.
47. Ibid., No. 29.
48. Elliot, 2:100.
49. Ibid., p. 99.
50. Ibid.
51. Ibid., 3:433.
52. Ibid., 4:219–20.
53. *Federalist Papers*, No. 43.
54. Ibid; emphasis added.
55. Elliot, 3:245–46.
56. Ibid., 2:468.
57. Ibid., 3:455.
58. Ibid., 4:140–41.
59. Ibid., 3:441.
60. Ibid., 2:481.
61. Ibid., p. 449.
62. *Federalist Papers*, No. 23.
63. Ibid., No. 33.
64. Ibid., No. 44.

CHAPTER

RESTRAINTS ON CONGRESS

We now come to eight clauses (covering ten provisions) in the Constitution which are restraints upon the national government. Later, the restraints against the states will also be covered.

So far as is known, section 9 of Article I represents the first time in history that restraints have been placed upon a legislative body. It is customary to place curbs on kings, rulers, or presidents, but never before had curbs been placed on a legislature. Nevertheless, the American founders feared the legislature. Parliament was often tyrannical. "An elective despotism was not the government we fought for," wrote Jefferson.[1] Madison also said that "the people ought to indulge all their jealousy and exhaust all their precautions"[2] in protecting their rights against usurpation of power by branches of the central government.

PROVISION 107

From Article I.9.1

Until A.D. 1808 there shall be no prohibition or interference against the migration or importation of any persons which the "states now existing" shall consider proper for admission.

This provision gave the states the RIGHT to continue importing slaves and bond servants for twenty years, but thereafter it gave the federal government the RIGHT to terminate it.

This provision was the first milestone on the long road back from slavery. This delay of twenty years was the price ten of the states were willing to pay in order to insure that the original union would include the three states of Georgia, South Carolina, and North Carolina. Even in these states there was a growing sentiment in favor of emancipation, but they wanted more time to phase out their economic dependence on slavery. South Carolina and Georgia were particularly adamant on the point. North Carolina was open to persuasion.

Originally, all of the colonies had slaves and bond servants. (The slave market in Boston was located on the Boston Common.) Several thousand free blacks also had slaves. However, many of the religious leaders had been campaigning against the importation of slaves almost from the arrival of the first boatload in 1619 when a cargo of captured Africans was brought to Jamestown in a Dutch ship.

In his original draft of the Declaration of Independence, one of the principal charges made by Jefferson against King George and his predecessors was the fact that they would not allow the American colonies to outlaw the importation of slaves.

When Jefferson was twenty-five years of age he was elected to the Virginia legislature, and his first political act was to begin the elimination of slavery. Though unsuccessful in this first effort, he tried to further encourage the emancipation process by writing into the Declaration of Independence that "all men are created equal." In his draft of a constitution for Virginia he provided that all slaves would be emancipated in that state by 1800, and that any child born in Virginia after 1801 would be born free. Had this been adopted it may have spread to other states and prevented the terror and destructive desolation of the War Between the States.

When the Constitutional Convention was held in 1787 the sentiment for phasing out the entire institution of slavery was becoming very strong. In nearly all of the states the moral issue was clear. However, the pathway to an economic transition out of slavery was not so clear, not even for the slaves. Most of them were woefully unprepared for a life of competitive independence.

In view of these circumstances, the Founders were willing to allow twenty years for further maturity of a nonslave economy in certain states, but meanwhile they wished to unitedly declare in a voice loud and clear that slavery was on its way out. They did this by putting a provision

in the Northwest Ordinance (passed the same year the Constitution was written —1787) that in the new states there would be *no* slavery.

This provision, which allowed a delay of the slavery issue, was used by the northern states as a "trading chip" to get the southern states to allow the Congress to regulate interstate and foreign commerce. The southern states feared that this power might be used to force them to sell their cotton to the textile mills of the northern states rather than get a premium price from the textile mills of England and Europe. However, as part of the agreement to delay the slavery issue, the southern states agreed to the "commerce clause."

Although the importation of slaves was not permitted after 1808, it took the Civil War, the Emancipation Proclamation of President Lincoln, and the Thirteenth Amendment to abruptly end the institution of involuntary servitude in the United States. Since the adoption of the Thirteenth and Fourteenth Amendments, the above clause in the Constitution is merely a historical curiosity. However, the strong feelings of the Founders as they hammered out this compromise are reflected in the following quotations, which came in response to a variety of issues and events of their time:

• *Who had been promoting the importation of slaves?*

Slavery Originated in the Avarice of British Merchants

Mason: "This infernal traffic originated in the avarice of British merchants. The British government constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing states alone but the whole Union. Maryland and Virginia ... had already prohibited the importation of slaves expressly. North Carolina had done the same in substance.... Slavery discourages arts and manufactures. The poor despise labor when performed by slaves.... Every master of slaves is born a petty tyrant. They bring the judgment of Heaven on a country. As nations cannot be rewarded or punished in the next world, they must be in this. By an inevitable chain of causes and effects, Providence punishes national sins by national calamities. He lamented that some of our eastern brethren had, from a lust of gain, embarked in this nefarious traffic. As to the states being in possession of the right to import, this was the case with many other rights, now to be properly given up. He held it essential in every point of view that the general government should have power to prevent the increase of slavery."[3]

• *Is this clause a restriction of power or a grant of power?*

This Clause Is a Restriction

Randolph: "The insertion of the negative *restriction* has given cause of triumph, it seems, to gentlemen. They suppose that it demonstrates that Congress are to have powers by implication. I will meet them on that ground. I persuade myself that every exception here mentioned is an exception not from general powers, but from the particular powers therein vested. To what power in the general government is the exception made respecting the importation of negroes? Not from a general power, but from a particular power expressly enumerated. This is an exception from the power given them of regulating commerce."[4]

• *Does this clause reflect the intention of the Founders to abolish slavery?*

This Clause Is an Important Move Toward Ultimate Abolition

Madison: "It were doubtless to be wished that the power of prohibiting the importation of slaves had not been postponed until the year 1808, or rather that it had been suffered to have immediate operation. But it is not difficult to account either for this restriction on the general government, or for the manner in which the whole clause is expressed. It ought to be considered as a great point gained in favor of humanity that a period of twenty years may terminate forever, within these States, a traffic which has so long and so loudly upbraided the barbarism of modern policy; that within that period it will receive a considerable discouragement from the federal government, and may be totally abolished."[5]

Abolishing Slavery Will Soon Be Within the Reach of the Federal Government

McKean: "The abolition of slavery is put within the reach of the federal government. And when we consider the situation and circumstances of the southern states, every man of candor will find more reason to rejoice that the power should be given at all, than to regret that its exercise should be postponed for twenty years."[6]

This Clause Is a Signal That One Day We Will Abolish Slavery

Backus: "Much, sir, hath been said about the importation of *slaves* into this country. I believe that, according to my capacity, no man abhors that wicked practice more than I do; I would gladly make use of all lawful means towards the abolishing of slavery in all parts of the land. But let us consider where we are, and what we are doing. In the Articles of Confederation, no provision was made to hinder the importation of slaves into any of these states; but a door is now open hereafter to do it, and each state is at liberty now to abolish slavery as soon as they please. And let us remember our former connection with Great Britain, from whom many in our land think we ought not to have revolted. How did they carry on the slave trade? I know that the bishop of Gloucester, in an annual sermon in London, in February, 1776, endeavored to justify their tyrannical claims of power over us by casting the reproach of the slave trade upon the Americans. But at the close of the war, the bishop of Chester, in an annual sermon, in February, 1783, ingenuously owned that their nation is the most deeply involved in the guilt of that trade of any nation in the world; and, also, that they have treated their slaves in the West Indies worse than the French or Spaniards have done theirs.[7]

Abolition of Slavery Already in Process

Sherman: "He observed that the abolition of slavery seemed to be going on in the United States, and that the good sense of the several states would probably by degrees complete it."[8]

This Clause Is a Beginning

McKean: "Provision is made that Congress shall have power to prohibit the importation of slaves after the year 1808; but the gentlemen in opposition accuse this system of a crime, because it has not prohibited it at once. I suspect those gentlemen are not well acquainted with the business of the diplomatic body, or they would know that an agreement might be made that did not perfectly accord with the will and pleasure of any one person. Instead of finding fault with what has been gained, I am happy to see a disposition in the United States to do so much."[9]

Within a Few Years Congress Will Have the Power to Exterminate Slavery

Wilson: "I am sorry that it could be extended no farther; but so far as it operates, it presents us with the pleasing prospect that the rights of mankind will be acknowledged and established throughout the Union.

"If there was no other lovely feature in the Constitution but this one, it would diffuse a beauty over its whole countenance. Yet the lapse of a few years, and Congress will have power to exterminate slavery from within our borders."[10]

• *What about outlawing slavery in the new states?*

Slavery Can Be Outlawed for Any New States

Heath: "I apprehend that it is not in our power to do any thing for or against those who are in slavery in the Southern States. No gentleman, within these walls, detests every idea of slavery more than I do; it is generally detested by the people of this commonwealth; and I ardently hope that the time will soon come when our brethren in the Southern States will view it as we do, and put a stop to it; but to this we have no right to compel them. Two questions naturally arise: If we ratify the Constitution, shall we do any thing by our act to hold the blacks in slavery? or shall we become the partakers of other men's sins? I think, neither of them. Each state is sovereign and independent to a certain degree, and the states have a right, and they will regulate their own internal affairs as to themselves appears proper; and shall we refuse to eat, or to drink, or to be united, with those who do not think, or act, just as we do? Surely not. We are not in this case, partakers of other men's sins; for in nothing do we voluntarily encourage the slavery of our fellowmen. A restriction is laid on the federal government, which could not be avoided, and a union take place. The federal Convention went as far as they could. The migration or importation, etc., is confined to the states now *existing only;* new states cannot claim it. Congress, by their ordinance for erecting new states, some time since, declared that the new states shall be republican, and that there shall be no slavery in them."[11]

• *How many states had already outlawed the importation of slaves?*

All but Two States Have Outlawed Importation of Slaves

Neal: "On the other side, gentlemen said, that the step taken in this article towards the abolition of slavery was one of the beauties of the Constitution. They observed, that in the Confederation there was no provision whatever for its being abolished; but this Constitution provides that Congress may, after twenty years, totally annihilate the slave trade, and that, as all the states, except two, have passed laws to this effect [prohibiting importation of slaves], it might reasonably be expected that it would then be done. In the interim, all the states were at liberty to prohibit it."[12]

Connecticut and Massachusetts Have Already Abolished Slavery

Ellsworth: "Slavery, in time, will not be a speck in our country. Provision is already made in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts."[13]

If Left Alone, South Carolina Would Probably Abolish Importation

C. Pinckney: "If the southern states were

let alone, they will probably of themselves stop importations. He would himself, as a citizen of South Carolina, vote for it. An attempt to take away the right, as proposed, will produce serious objections to the Constitution, which he wished to see adopted."[14]

• *What was the risk in outlawing slavery altogether?*

Slavery Evil, Disunion Worse

Madison: "The Southern States would not have entered into the Union of America without the temporary permission of that trade; and if they were excluded from the Union, the consequences might be dreadful to them and to us.... Great as the evil is, a dismemberment of the Union would be worse. If those states should disunite from the other states for not indulging them in the temporary continuance of this traffic, they might solicit and obtain aid from foreign powers."[15]

Ratification of the Constitution Pending on This Clause for Two States

Williamson: "Said that both in opinion and practice, he was against slavery; but thought it more in favor of humanity, from a view of all circumstances, to let in South Carolina, and Georgia, on those terms than to exclude them from the Union."[16]

If This Is an Ultimatum, Better to Allow Importation and Save the Union

Sherman: "Said it was better to let the southern states import slaves than to part with them, if they made that a *sine qua non*."[17]

Slavery an Economic Necessity in South Carolina and Georgia

C.C. Pinckney: "Declared it to be his firm opinion that if himself and all his col-

leagues were to sign the Constitution and use their personal influence, it would be of no avail towards obtaining the assent of their constituents. South Carolina and Georgia cannot do without slaves."[18]

Georgia Opposed to This Clause As Not Being a Matter of National Concern

Baldwin: "Had conceived national objects alone to be before the Convention; not such as, like the present, were of a local nature. Georgia was decided on this point."[19]

North Carolina, South Carolina, and Georgia Want No Restriction on Importation

Rutledge: "If the Convention thinks that North Carolina, South Carolina, and Georgia will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those states will never be such fools as to give up so important an interest."[20]

South Carolina Raising Principal Objections

C. Pinckney: "South Carolina can never receive the plan if it prohibits the slave trade. In every proposed extension of the powers of Congress, that state has expressly and watchfully excepted that of meddling with the importation of negroes. If the states be all left at liberty on this subject, South Carolina may perhaps, by degrees, do of herself what is wished, as Virginia and Maryland already have done."[21]

PROVISION 108
From Article I.9.1

The Congress is empowered to impose a tax on any such persons but it shall not exceed $10 per person.

This provision gave the Congress a RIGHT to put a tax on immigrants or imported persons (slaves) but limited the tax to $10 per person.

Import taxes were both a revenue-raising device and a means of regulating the kind and quality of persons coming into the country. The southern states agreed to a tax to cover expenses of an inspection to exclude convicts and undesirable persons, but insisted that the tax be limited to $10 so that it would not become prohibitive and restrict importation altogether.

The following dialogue at the Convention is interesting:

Purpose and Meaning of the Tax Provision on Imported Persons

Mason: Not to tax will be equivalent to a bounty on the importation of slaves.[22]

Gorham: Thought that Mr. Sherman should consider the duty not as implying that slaves are property, but as a discouragement to the importation of them.[23]

G. Morris: Remarked that, as the clause now stands, it implies that the legislature may tax freemen imported.[24]

Mason: In answer to Mr. G. Morris. The provision, as it stands, was necessary for the case of convicts, in order to prevent the introduction of them.[25]

This conversation would imply that the tax might be put on convicts who were not imported but migrated on their own initiative. This would be a broader interpretation of the clause than the explanation given by James Iredell to the people of his state:

No Tax Except on Imported Persons

Iredell: "The Eastern States...did not approve of the expression *slaves*.... [But] observe the distinction between the two words *migration* and *importation*. The first part of the clause will extend to persons who come into this country as free people, or are brought as slaves. But the last part extends to slaves only. The word *migration* refers to free persons; but the word *importation* refers to slaves, because free people cannot be said to be imported. The tax, therefore, is only to be laid on slaves who are imported, and not on free persons who migrate.... After twenty years they may prevent the future importation of slaves. It does not extend to those now in the country. There is another circumstance to be observed. There is no authority vested in Congress to restrain the state, in the interval of twenty years, from doing what they please. If they wish to prohibit such importation, they may do so."[26]

Congress was allowed to levy a tax on the importation of slaves.

PROVISION

109

From Article I.9.2

The right of demanding a writ of habeas corpus shall not be suspended unless there is a rebellion or an invasion and the public safety requires it.

This provision gave the people the RIGHT to demand a *habeas corpus* hearing any time they felt that a person was being unlawfully detained by the authorities.

The words *habeas corpus* simply mean "have the body," and these are the key words in an order from a court commanding the jailer or other officer having a prisoner in his custody to bring the person before the court. The purpose of such a writ was to determine whether or not an individual was being imprisoned at the whim of the king or his officer—the sheriff—without any formal charge or provision for a hearing.

From the most ancient Anglo-Saxon times it has always been considered a free man's inherent right to freely "travel at large" unless he had committed a crime or was suspected of treasonable conduct in which he could be arrested. It was a free man's additional right to have a prompt hearing immediately after arrest, where he could hear the charges that had been made against him and enter a plea of either guilty or not guilty. If he pleaded guilty, he was either sentenced or remanded to prison pending an investigation by the judge to determine the extent of the sentence. If he pleaded "not guilty," he was entitled to be released until the appointed date of his trial, providing he first posted a bond or surety so as to satisfy the court that he would be present at the trial.

If the rights of a free man were violated at any stage of this procedure, it was his privilege to have an attorney seek a writ or order of *habeas corpus* from a higher court, which required a jailer or other officer in charge of a prisoner to bring forth his body before the court in order that the circumstances of his imprisonment could be ascertained and his inherent rights protected.

It has been customary throughout the ages for kings or government officers to violate the liberties of their subjects without due process of law. Government is defined as society's instrument of "organized force," and it has always been a problem to keep this force under control. The writ of *habeas corpus* has been one of the most important instruments for the preservation of a citizen's liberty; nevertheless, it has had to be asserted and reasserted from generation to generation. Therefore, the provision of the Magna Charta, guaranteeing every free man from being "taken or imprisoned...but by lawful judgment of his peers of the land," is merely a declaration of an immemorial, God-given right which was unalienable.

Charles I

In 1628 the Parliament accused Charles I of arresting citizens for political reasons and holding them without trial. This accusation was included in the famous "Petition of Right" in which Charles I was obliged to make a commitment that in the future "free men" would not be impris-

oned except as provided by due process of law. It will be recalled that Charles I was eventually beheaded because he was considered to have violated his commitments to the people. Even under the rule of his son, Charles II (1679), it was necessary for Parliament to pass the first Habeas Corpus Act, which provided that no person could be arrested and held in prison without a formal charge being registered against him and a prompt hearing and trial provided. It was not until 1816, while King George III was still alive, that the Parliament expanded the Habeas Corpus Act of 1679 to cover imprisonments for any cause, not merely a crime. This was to protect people arrested for their debts or because they were victims of political capriciousness. Unfortunately, the many wars in which England has been involved resulted in the passage of various *habeas corpus* suspension acts, which provide that during a national emergency any person imprisoned under a warrant signed by the secretary of state on a charge of high treason or *suspicion* of treason can be held indefinitely without a hearing or trial. Thanks to the American Constitution, that cannot be done in the United States.

History of Habeas Corpus in the United States

Note that in the United States the privilege of *habeas corpus* cannot be suspended unless there is (1) rebellion or (2) an invasion, and even then it cannot be done unless it is required to protect the "public safety." During the Civil War President Lincoln authorized General Scott to suspend the privilege of *habeas corpus* when in his judgment it seemed necessary to protect the public safety. This immediately raised the question as to whether it is the Congress or the President who has the right to suspend the privilege of *habeas corpus*. This constitutional provision is in Article I which describes the powers of the national legislature; therefore Chief Justice Taney held that only Congress could suspend the writ. To clarify the matter Congress passed an act on March 3, 1863, providing "that, during the present rebellion, the President of the United States, whenever, in his judgment, the public safety may require, is authorized to suspend the privilege of the Writ of Habeas Corpus in any case throughout the United States or any part thereof." This power has been held to lie with the President ever since and was used by President Grant during the reconstruction period (1871).

This is the only time the term *habeas corpus* is mentioned in the Constitution. It should be kept in mind that the Magna Charta and the Habeas Corpus Act of 1679 did not *create* any right to personal freedom since human liberty was always considered under common law to be a God-given, unalienable right. All the Habeas Corpus Act did was to provide a procedure for the protection of that right. It should be further noted that the present provision in the Constitution is a restriction on the federal government and not the states.

During the debates the Founders responded to the following questions concerning this provision:

- *What is the real significance of a writ of* habeas corpus*?*

Meaning of Habeas Corpus

Iredell: "By the privileges of the *habeas corpus,* no man can be confined without inquiry, and if it should appear that he has been committed contrary to law, he must be discharged."[27]

This Clause Designed to Limit Power of Congress via the Courts

Randolph: "By virtue of the power given to Congress to regulate courts, they could suspend the writ of *habeas corpus*. This is therefore an exception to that power."[28]

A Judge Explains Habeas Corpus

Sumner: "Said, that this was a restriction on Congress, that the writ of *habeas corpus* should not be suspended, except in the cases of rebellion or invasion. The learned judge then explained the nature of this writ. When a person . . . is imprisoned, he applies to a judge of the Supreme Court; the judge issues his writ to the jailer, calling upon him to have the body of the person imprisoned before him, with the crime on which he was committed. If it then appears that the person was legally committed, and that he was not bailable, he is remanded to prison; if illegally confined, he is enlarged. This privilege, he said, is essential to freedom, and therefore the power to suspend it is restricted. On the other hand, the state, he said, might be involved in danger; the worst enemy may lay plans to destroy us, and so artfully as to prevent any evidence against him, and might ruin the country, without the power to suspend the writ was thus given. Congress have only power to suspend the privilege to persons committed by their authority. A person committed under the authority of the states will still have a right to this writ."[29]

Habeas Corpus—the Means of Preventing Arbitrary Imprisonments

Hamilton: "The practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny. The observations of the judicious Blackstone . . . are well worthy of recital: To bereave a man of life or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore *a more dangerous engine* of arbitrary government. And as a remedy for this fatal evil he is everywhere peculiarly emphatical in his encomiums on the *habeas-corpus* act, which in one place he calls the BULWARK of the British Constitution."[30]

• *Why wasn't a time limit put on the suspension of habeas corpus during a rebellion or invasion?*

Suspension Terminated Automatically

Dana: "[When asked why the time was not limited], said . . . that he did not see the necessity or great benefit of limiting the *time*. Supposing it had been, as in our constitution, not exceeding twelve months, yet, as our legislature can, so might the Congress, continue the suspension of the writ from time to time, or from year to year. The safest and best restriction, therefore, arises from the nature of the cases in which Congress are authorized to exercise that power at all, namely, in those of rebellion or invasion. These are clear and certain terms, facts of public notoriety, and whenever these shall cease to exist, the suspension of the writ must necessarily cease also."[31]

PROVISION

110

From Article I.9.3

The Congress shall pass no bill of attainder (declaring a person to be a criminal without a trial and conviction).

This provision gave every American the RIGHT not to be declared an outlaw or a criminal by a legislative act, which was so often done in England and had been done to some extent in colonial America.

The word *attainder* comes from a French term meaning "to point" or "to touch" with the finger of accusation. A bill of attainder was an act of Parliament which arbitrarily deprived an individual or group of individuals of their civil rights without any trial or conviction. A person who had been "attainted" had therefore been "tainted or stained, disgraced or dishonored." Thus, a bill of attainder in England was an act of Parliament by which a man was tried, convicted, and disposed of without a jury, without a hearing in court, and generally without an opportunity to confront the witnesses against him or have the protection of the ordinary rules of evidence used in the courts. His blood was considered to be "attainted" or legally corrupted so that he could not inherit property from others, nor could his children inherit any of his property. It therefore allowed all of his property to go to the Crown, and this became a convenient but vicious instrument for the enrichment of the Crown.

During periods when the king dominated the Parliament, bills of attainder were used to punish any citizen who had incurred the king's displeasure, and many fell victims of these proceedings who could not have been charged with any offense under existing law. Thomas Wentworth, for example, was the chief adviser to Charles I, and when the House of Commons brought an impeachment against him he was tried before the House of Lords on the charge of attempting to subvert the liberties of England. Wentworth (who was the Earl of Strafford) defended himself with great ability, and when it was seen that there would not be enough votes to convict him, the proceedings were suspended and a bill of attainder was passed. Under severe pressure, the king signed the bill and Wentworth was beheaded.

Bill of Attainder Used Extensively During the Revolutionary War

During the American Revolutionary War, bills of attainder were used extensively to confiscate the property of royalists. It was such a well-established procedure that Thomas Jefferson as late as 1777 wrote a bill of attainder for a notorious outlaw in Virginia. By 1787, however, the Founders were convinced that even under the pressure of wartime conditions or a national emergency, this was an improper mode of punishment which violated the basic civil rights of a citizen. It was therefore proscribed or outlawed both on the federal level and among the states.[32]

PROVISION 111

From Article I.9.3

The Congress shall pass no ex post facto law.

This gave every American the RIGHT not to have the Congress pass a law penalizing a person for an act after the act has occurred.

The term *ex post facto* simply means "after the deed or fact." There are five situations which this provision prohibits:

1. Charging someone with an offense or crime which was not illegal at the time it occurred. For example, charging him with the manufacture of liquor which occurred prior to the passage of the Prohibition Act.
2. Charging someone with a crime under a law which has made the offense more serious than when it was committed. For example, charging him with a felony when the act was only a misdemeanor at the time the act occurred.
3. Subjecting someone to a greater punishment than was prescribed by the law at the time the offense was perpetrated. For example, fining him $1,000.00 when the maximum fine was only $500.00 at the time the offense occurred.
4. Allowing evidence to be introduced under new rules which were not in effect at the time the offense occurred. For example, permitting a person to be convicted upon less evidence or different evidence than was required when the offense was committed.
5. Passing a law which deprives the accused of some protection to which he was entitled at the time the act occurred. For example, changing the number in the jury from twelve to eight after a crime had been committed.

Many injustices have been prevented under this provision. For example, a law requiring a person on death row to be held in solitary confinement was held to be *ex post facto* for any persons convicted of a capital crime prior to the passage of the law, since it definitely added to the punishment connected with the offense. A law forbidding a person who had engaged in a rebellion during the Civil War to practice before the Supreme Court was also held to be *ex post facto* because it was a "legislative decree of perpetual exclusion," a form of punishment which did not exist at the time the acts of rebellion occurred.

For a variety of reasons the Supreme Court has held that some laws are not *ex post facto* even though they may appear to be so. For example, a deportation law authorizing the Secretary of Labor to expel aliens for criminal acts committed before the law was passed is not considered *ex post facto* because it did not impose a punishment but simply deprived the alien of his illegally acquired privileges. A further extension of this reasoning occurred in the federal court for the Territory of Utah when persons with polygamous families were deprived of the right to vote even though they had not violated the law after the statute against polygamy had been passed. The court excluded the argument that this was *ex post facto* on the ground that it was not an additional penalty but "merely defined the past practice of polygamy as a disqualification of a

voter." This tenuous reasoning by the court is attributed to the public opinion pressures of the time rather than sound legal reasoning.[33]

The following comments on the *ex post facto* issue appear in the constitutional ratification reports:

Ex Post Facto Relates to Criminal Cases

Randolph: "This is a manifest exception to ... the criminal jurisdiction vested in that body."[34]

"Ex post facto laws ... relate solely to criminal cases; and . . .it was so interpreted in Convention.... It prohibits the passing of a law annexing a punishment to an act which was lawful at the time of committing it."[35]

PROVISION

112

From Article I.9.4

No capitation tax (a fixed tax of so much per person regardless of circumstances) or other direct tax shall be assessed against the states except in proportion to their population.

This provision gives the American people of any state the RIGHT not to be subjected to any capitation or head tax except in proportion to their population.

The word *capitation* comes from a Latin word meaning "head." Therefore, any reference to capitation taxes or poll taxes refers to a tax which is levied at "so much per head," regardless of circumstance. The Founders were well aware that this is not a fair tax, but it is the most easily collected in an emergency. But how much should the head tax be? Should this be determined by the wealth of the state, or its population? As will be seen from the quotations below, the Founders felt there was no way of accurately determining the wealth of a state, whereas there could be no question as to the number of people. For this reason they concluded at the Convention to make it a matter of constitutional mandate that if the government was ever forced to levy a head tax on the states, it would be according to population.

A Graduated Poll Tax

As for the question of fairness, Louis XVI of France tried to make poll taxes more

equitable by having a "graduation capitation tax." In other words, the upper classes with more wealth paid a significantly higher tax per person than the lower classes. However, the burden of this tax on the upper classes finally became so severe that it became one of the fundamental reasons why some of the aristocracy helped promote the French Revolution.

Poll Tax Only in an Emergency

The uncomfortable feeling engendered by the thought of a poll tax is expressed in this quotation from Alexander Hamilton:

"As to poll taxes, I, without scruple, confess my disapprobation of them.... I should lament to see them introduced into practice under the national government.... As little friendly as I am to the species of imposition, I still feel a thorough conviction that the power of having recourse to it ought to exist in the federal government. There are certain emergencies of nations in which expedients that in the ordinary state of things ought to be forborne become essential to the public weal. And the government, from the possibility of such emergencies, ought ever to have the option of making use of them.... I acknowledge my aversion to every project that is calculated to disarm the government of a single weapon, which in any possible contingency might be usefully employed for the general defense and security."[30]

Twenty-fourth Amendment

It is interesting that some states used a small poll tax until very recently to cover the costs of holding elections. However, a person who had not paid his poll tax could not vote. As small as the tax was ($1 or $2 usually), it prevented many poor people, both black and white, from voting. The Twenty-fourth Amendment made it unlawful to prevent a person from voting because he or she had not paid a poll tax or any other kind of tax.

PROVISION

113

From Article I.9.4

No direct tax shall be assessed against the states except in proportion to their population.

This provision gives the American people of any state the RIGHT not to be subject to any direct tax against themselves or their property except in proportion to population.

A direct tax is one which is levied against a person (head tax), his property (property tax), or his income (personal income tax). Notice that in all of these the taxpayer must pay "directly." In other words, he cannot pass the tax along to anyone else.

On the other hand, an "indirect" tax is one which is placed on finished goods or those in process of being manufactured. Any tax paid by the manufacturer or distributor is passed on to the consumer. This means that the only person actually paying the tax is the consumer. He may not realize it, but he has paid the tax "indirectly." For this reason, the many hidden taxes on a loaf of bread or other staples are paid for by the consumer

"indirectly." However, when he pays a poll tax, property tax, or income tax, he is paying taxes *directly.*

The Founders' primary objections to a direct tax were twofold:

1. It is impossible to assess direct taxes fairly.
2. It is impossible to collect them fairly.

During the debates, the Founders responded to numerous questions, such as:

- *What are direct taxes?*

Taxes on Land and Property

Marshall: "The objects of direct taxes are well understood: they are but few: what are they? Lands, slaves, stock of all kinds, and a few other articles of domestic [personal] property."[37]

- *Who will decide what is to be taxed?*

Apportionment of Direct Taxes Based on Population of Each State

Madison: "There is a proportion to be laid on each state, according to its population. The most proper article will be selected in each state. If one article, in any state, should be deficient, it will be laid on another article."[38]

Federal Government Will Not Designate Items on Which States Must Raise Direct Taxes

Madison: "The census in the Constitution was intended to introduce equality in the burdens to be laid on the community.... But uniformity of taxes would be subversive of the principles of equality; for it was not possible to select any article which would be easy for one state but what would be heavy for another;... the proportion of each state being ascertained, it would be raised by the general government in the most convenient manner for the people, and not by the selection of any one particular object."[39]

Selection of Items to Be Left Up to States

Madison: "They (Representatives) could select the most proper objects and distribute the taxes in such a manner as that they should fall in a due degree on every member of the community. They will be limited to fix the proportion of each state, and they must raise it in the most convenient and satisfactory manner to the public."[40]

- *Under what circumstances should a direct tax be assessed against the states?*

Direct Tax Should Be Considered a Contingency Tax

Madison: "Direct taxes will only be recurred to for great purposes.... As our imports will be necessary for the expenses of government and other common exigencies, how are we to carry on the means of defense? How is it possible a war could be supported without money or credit? And would it be possible for a government to have credit without having the power of raising money? No; it would be impossible for any government, in such a case, to defend itself.... No government can exist unless its powers extend to make provisions for every contingency. If we were actually attacked by a powerful nation, and our general government had not the power of raising money, but depended solely on requisitions, our condition would be truly deplorable."[41]

Direct Tax to Be the Last Resort in an Emergency Situation

Sedgwick: "Let us suppose . . . that we are attacked by a foreign enemy; that in this dilemma our treasury was exhausted, our credit gone, our enemy on our borders, and that there was no possible method of raising impost or excise; in this case, the only remedy would be a direct tax."[42]

All Nations Forced to Use Direct Taxes on Occasion

R. Livingston: "There are no governments that have not been obliged to levy direct taxes, and even procure loans, to answer the public wants; there are no governments which have not, in certain emergencies, been compelled to call for all the capital resources of the country. . . . The necessities of government will call for more money than external and indirect taxation can produce."[43]

Direct Taxes Will Be Rarely Used

Corbin: "This mode of levying money, though indispensably necessary on great emergencies, will be but seldom recurred to."[44]

Duties and Excises Should Be Sufficient for Ordinary Expenses

Johnston: "It seems to me probable that the money arising from duties and excises will be, in general, sufficient to answer all the ordinary purposes of government; but in cases of emergency, it will be necessary to lay direct taxes . . . for it cannot be supposed that, from the ordinary sources of revenue, money can be brought into our treasury in such a manner as to answer pressing dangers; nor can it be supposed that our credit will enable us to procure any loans, if our government is limited in the means of procuring money. . . . I hope and believe that the taxes to be laid on by the general legislature will be so very light that it will be no inconvenience to the people to pay them."[45]

• *What was the reasoning behind the assessment of direct taxes based on population?*

Direct Taxes on Individuals Preferable to a Requisition Against Each State

Spencer: "How are direct taxes to be laid? By a poll tax, assessments on land or other property? Inconvenience and oppression will arise from any of them. . . . Laws operating on individuals cannot be carried on against states; because, if they do not comply with the general laws of the Union, there is no way to compel a compliance but force. There must be an army to compel them. Some states may have some excuse for non-compliance. Others will feign excuses. Several states may perhaps be in the same predicament. If force be used to compel them, they will probably call for foreign aid; and the very means of defense will operate to the dissolution of the system, and to the destruction of the states. . . . Therefore . . . Congress ought to have the power of taking out of the pockets of the individuals at large."[46]

Direct Tax Gives Federal Government Access to the People Themselves

Hill: "Were the money to be paid into our treasury first, instead of recommitting it to the Continental treasury, we should apply it to discharge our own pressing demands; by which means, a very small proportion of it would be paid to Congress. And what would be the consequence? Congress must depend upon twelve funds

for its support. . . . [Only twelve states were represented at the convention. Rhode Island did not participate.] What a slender and precarious dependence would this be!. . . If the states would refuse to pay requisitions, and the Continental officers were sent to collect, the states would be degraded, and the people discontented. . . .

"Congress ought to be possessed of the power of applying immediately to the people for its support, without the interposition of the state legislatures."[47]

Why a Direct Tax Is Apportioned by Population, Not Value of Land

Hamilton: "Those of the direct kind, which principally relate to land and buildings, may admit of a rule of apportionment. Either the value of land, or the number of the people, may serve as a standard. And, . . . as a rule, for the purpose intended, numbers, in the view of simplicity and certainty, are entitled to a preference. In every country it is a herculean task to obtain a valuation of the land; in a country imperfectly settled and progressive in improvement, the difficulties are increased almost to impracticability. The expense of an accurate valuation is, in all situations, a formidable objection."[48]

• *What is the remedy if the power to apportion direct taxes is abused?*

If People Elect Representatives Who Abuse Them with Direct Taxes, It Is Their Own Fault

Dawes: "That Congress, however, will not apply to the power of *direct taxation*, unless in cases of emergency, is plain; because, as thirty thousand inhabitants will elect a representative, eight-tenths of which electors perhaps are yeomen, and

The combination of taxes has become so burdensome that it is shackling America.

holders of farms, it will be their own faults if they are not represented by such men as will never permit the land to be injured by unnecessary taxes."[49]

Collection of Taxes Should Be Peaceable and Friendly

Corbin: "The public money is to be collected by mild and gentle means; by a peaceable and friendly application to the individuals of the community."[50]

• *Who will collect the taxes?*

Federal Officers Collect Direct Taxes for Government

Mason: "How stood our taxes before the Constitution was introduced? Requisitions were made on the state legislatures, and, if they were unjust, they could be refused. . . . But now this could not be done, for direct taxation is brought home to us. The federal officer collects immediately of the planters."[51]

PROVISION 114

From Article I.9.5

The Congress shall not place a tax or duty on any articles or products exported from any state.

This provision gives the states the RIGHT to freely export goods to foreign countries without the federal government intervening with a regulatory or prohibitive tax.

This provision was adopted at the insistence of the cotton states because of their profitable markets in Europe. They did not want an export tax which would force them to sell to the New England textile mills at a cheaper price.

It should be noted that Congress may tax commodities even though they are exported by the states, providing the tax is uniformly applied on these goods whether they are exported or not. During the Civil War a tax on cotton and tobacco was held to be constitutional because the tax was not laid on the articles because of their exportation but simply on the commodities themselves, regardless of whether or not they entered foreign commerce.

This clause received extensive discussion. The Founders responded to questions such as the following:

- *Is this clause a restriction on the power of Congress to regulate commerce?*

An Exception to Congressional Power

Randolph: "The restrictions in the 5th clause are an exception to the power of regulating commerce."[52]

- *Would taxes on exports disrupt the Union?*

Taxes on Exports Could Disrupt the Union

Ellsworth: "There are solid reasons against Congress taxing exports. First, it will discourage industry, as taxes on imports discourage luxury. Secondly, the produce of different states is such as to prevent uniformity in such taxes. There are indeed but a few articles that could be taxed at all; as tobacco, rice, and indigo; and a tax on these alone would be partial and unjust. Thirdly, the taxing of exports would engender incurable jealousies."[53]

Tax on Exports Could Be Used to Impose More Power

Gerry: "Was strenuously opposed to the power over exports. It might be made use of to compel the states to comply with the will of the general government, and to grant it any new powers which might be demanded."[54]

Could Create Dangerous Economic Wars Among the States

Mason: "If he were for reducing the states to mere corporations, as seemed to be the tendency of some arguments, he should be for subjecting their exports as well as imports to a power of general taxation. He went on a principle often advanced and in which he concurred; that a majority, when interested, will oppress the minority. This maxim had been verified by our own legislature [of Virginia]. If we compare the states in this point of view, the eight northern states have an

interest different from the five southern states; and have, in one branch of the legislature, thirty-six votes against twenty-nine, and in the other in the proportion of eight against five."

"The southern states had therefore ground for their suspicions. The case of exports was not the same with that of imports. The latter were the same throughout the states; the former very different. As to tobacco, other nations do raise it, and are capable of raising it, as well as Virginia, etc. The impolicy of taxing that article had been demonstrated by the experiment of Virginia."[55]

It Could Encourage Economic Sectionalism

Clymer: "Remarked that every state might reason with regard to its particular productions in the same manner as the southern states. The middle states may apprehend an oppression of their wheat, flour, provisions, etc.; and with more reason, as these articles were exposed to a competition in foreign markets not incident to tobacco, rice, etc. They may apprehend also combinations against them, between the eastern and southern states as much as the latter can apprehend them between the eastern and middle."[56]

- *What about the need to put an embargo on trade in times of war?*

This Does Not Prevent Imposing an Embargo in Time of War

Ellsworth: "Did not conceive an embargo by the congress interdicted by this section."

McHenry: "Conceived that power to be included in the power of war."[57]

PROVISION 115

From Article I.9.6

No regulation of commerce or revenue shall give preference to the ports of one state over those of another.

This provision gives every port of the United States the RIGHT to insist that any federal revenue regulations be fairly and equitably administered so that no port has an advantage over another.

This provision was included in the Constitution at the insistence of the delegates from Maryland, who feared that congressional legislation might give preference to the Virginia ports of the Chesapeake Bay rather than their own.

It will be recalled that the Founders were attempting to remove the weaknesses of the Articles of Confederation which allowed the various states to discriminate against one another by the imposition of taxes on exports. In the present provision the states were attempting to prevent the federal government from interfering with the normal flow of commerce by preferring one port over another.

PROVISION

116

From Article I.9.6

No vessel going from one state to another shall be obliged to enter into any other port for the purpose of clearing passage or paying duties to a state.

This provision gives the owner of any vessel the RIGHT to proceed from port to port without having to pay tribute or gain clearance from any intervening ports.

Like the Barbary Pirates, a number of states would not allow vessels to pass their shores without coming into port for clearance and the payment of tribute. This provision was designed to guarantee freedom of the coastal seas.

The apprehension among certain of the Founders is reflected in this notation in the Constitutional Convention record:

This Limitation on Regulation of Commerce Recognizes Abuses of the Past

D. Carroll and L. Martin: "Expressed their apprehensions, and the probable apprehensions of their constituents, that under the power of regulating trade the general legislature might favor the ports of particular states, by requiring vessels destined to or from other states to enter and clear thereat; as vessels belonging or bound to Baltimore, to enter and clear at Norfolk, etc."[58]

PROVISION

117

From Article I.9.7

No money shall be withdrawn from the Treasury unless it has been specifically authorized by a lawful appropriation.

This provision gives the American people the RIGHT not to have any of their tax money spent unless it has been approved by their elected representatives.

This is the meaning of the phrase, "appropriation made by law." It is intended to mean that neither the executive nor the legislature alone can raise or spend money at will, but that each appropriation bill must be passed by both the House and Senate and signed by the President (or passed over his veto by a two-thirds vote).

As Randolph stated in the debates, "No money should be drawn from the treasury but in consequence of appropriations made by law, [it] is an exception to the power of paying the debts of the United States."[59]

In other words, even though a legitimate debt is due by the United States, no

payment can be made until an appropriation for that purpose has been legally processed as described above.

A variety of tricky devices have been developed by government agencies to circumvent this requirement. Some of these include:

1. A confidential fund allocated to the executive for undercover intelligence work.
2. Government contracts based on "cost plus 10 percent" with virtually no supervision of the cost factor.
3. Trust funds in various agencies with wide discretionary power to spend accrued interest without a public accounting.
4. Authority granted to the Federal Reserve to deduct its "expenses" from the accrued profits before turning the remainder over to the U.S. Treasury. The extravagant "expenses" of the Fed have been criticized in Congress.
5. The Budget Act of 1974, which allowed a group of so-called "experts" in the Congressional Budget Office to establish an estimate of funds needed for each agency—and thereby eliminate a close analysis of each program in the agency to see if it justified the expenditure or even the existence of the project.
6. Shifting certain expenses to "off budget" items. When this was first authorized in 1974 the off-budget deficit was $1.4 billion. By 1984 it had expanded to $16 billion.

PROVISION

118

From Article I.9.7

Accounts of all receipts and expenditures of public money shall be maintained and published from time to time.

This provision gives the American people the RIGHT to know how much money was collected by the government and specifically how it was spent.

Before the days of the calculator and the computer, this provision constituted a formidable task. Today, however, there is an elaborate publication of the budget proposal, the actual income, and the actual expenditures.

With the Founders, the principal concern was an accurate accounting of funds to prevent extravagance, embezzlement, and fraud. Here are some of their comments:

There Must Be an Accountability for All Expenditures

McKean: "What greater security could be required or given upon this important subject? First, the money must be appropriated by law, then drawn for according to that appropriation, and lastly, from time to time, an account of the receipts and expenditures must be submitted to the people, who will thus be enabled to judge of the conduct of their rulers, and, if they see cause to object to the use or the excess of the sums raised, they may express their wishes or disapprobation to

the legislature in petitions or remonstrances, which if just and reasonable, cannot fail to be effectual."[60]

Originally, Annual Publication of Expenditures Not Considered Feasible

Madison: "Proposed to strike out 'annually' from the motion, and insert 'from time to time,' which would enjoin the duty of frequent publications and leave enough to the discretion of the legislature. Require too much and the difficulty will beget a habit of doing nothing. The Articles of Confederation require half yearly publications on this subject. A punctual compliance being often impossible, the practice has ceased altogether."

Wilson: "Seconded and supported the motion. Many operations of finance cannot be properly published at certain times."[61]

PROVISION 119

From Article I.9.8

No title of nobility shall be granted by the United States.

This provision gives the American people the RIGHT not to have the federal government create an aristocratic or privileged class in the United States.

This provision is almost identical with the one which appears in the Articles of Confederation (Article VI). It was designed to prevent the division of the people into upper and lower classes, and to prevent officers or persons of prominence in the United States from coming under the influence of foreign powers through titles or gifts. When Lord Baltimore received his charter for Maryland in 1632 it authorized him to grant titles of nobility. One or two other colonial charters granted this same authority. The Founders were anxious to wipe out the possibility of a peerage class being developed during the coming generations.

The ranks of nobility in England were those of a duke, marquis, earl, viscount, and baron. There were to be no such ranks among the people of the United States.

After the Revolutionary War some suggested, to Washington's horror, that he be made king of America.

PROVISION

120

From Article I.9.8

No person holding any office of either profit or trust for the United States shall accept any present, office, or title from a foreign country or a foreign potentate unless it is specifically authorized by Congress.

This gives the American people the RIGHT to expect their elected and appointed officials to function in the position for which they are paid without being influenced by gifts or emoluments from a foreign government or agency.

The Founders were anxious that the wealth of European nations would not be used to compromise the loyalties of American officials. It is said that a gift from the king of France to the American ambassador during the Revolutionary War aroused sufficient concern to have this provision inserted in the Constitution.[1]

In 1806 President Jefferson accepted a personal gift from Alexander I of Russia consisting of a marble bust of the emperor. Jefferson explained that he ordinarily would not accept anything but books, pamphlets, or other things of minor value from foreign dignitaries but that in this one case his "particular esteem" for the emperor "places his image in my mind above the scope of law." However, in 1902, the Attorney General held that the acceptance of a photograph from Prince Henry of Prussia, brother of the emperor of Germany, by civil and military officers of the United States was in violation of this provision.

In 1810 Congress proposed an amendment to deprive a person of his American citizenship if he accepted any title of nobility or any present, pension, office, or emolument from a foreign government. This proposed amendment failed to become a part of the Constitution because it lacked the necessary ratifying votes of one state.

The Founders left no doubt as to their intention when they incorporated this provision into the Constitution:

This Provision Designed to Prevent Corruption and Foreign Influence

Randolph: "Titles of nobility . . . sprang from military and civil offices. Both are put in the hands of the United States, and therefore I presume it to be an exception to that power.

"The last restriction restrains any person in office from accepting of any present or emolument, title or office, from any foreign prince or state. . . . It was thought proper, in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any *emoluments* from foreign states."[2]

Hereditary Titles and Emoluments Constitute the Main "Engine of Tyranny"

Backus: "Another great advantage, sir, in the Constitution before us, is, its excluding all titles of nobility, or hereditary succession of power, which hath been a main engine of tyranny in foreign countries.

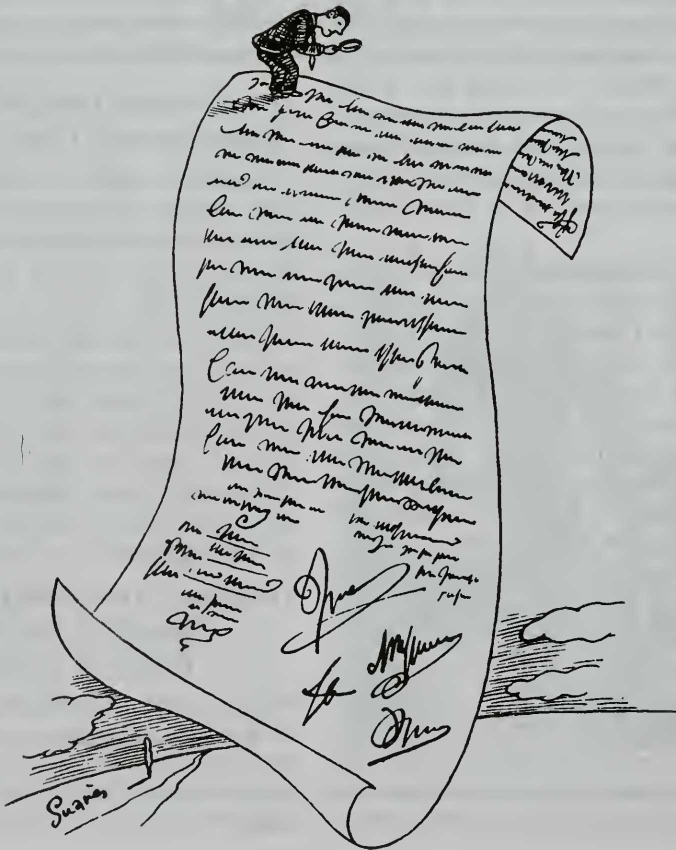
But the American revolution was built upon the principle that all men are born with an equal right to liberty and property, and that officers have no right to any power but what is fairly given them by the consent of the people. And in the Constitution now proposed to us, a power is reserved to the people constitutionally to reduce every officer again to a private station; and what a guard is this against their invasion of others' rights, or abusing of their power! Such a door is now opened for the establishment of righteous government, and for securing equal liberty, as never was before opened to any people upon earth."[63]

This Provision Designed to Keep Government in the Hands of the People

Hamilton: "This may truly be denominated the cornerstone of republican government; for so long as they are excluded there can never be serious danger that the government will be any other than that of the people."[64]

It Will Also Protect U.S. Ministers from Falling Under Foreign Influence

C. Pinckney: "Urged the necessity of preserving foreign ministers, and other officers of the United States, independent of external influence."[65]



1. Saul K. Padover, ed., *The Complete Jefferson* (New York: Tudor Publishing Co., 1943), p. 648.
2. *Federalist Papers,* No. 48.
3. Madison, p. 443.
4. Elliot, 3:464.
5. *Federalist Papers,* No. 42.
6. Elliot, 2:278.
7. Ibid., pp. 149–50.
8. Madison, p. 443.
9. Elliot, 2:538.
10. Ibid., p. 484.
11. Ibid., p. 115.
12. Ibid., p. 107.
13. Madison, p. 444.
14. Ibid.
15. Elliot, 3:453–54.
16. Madison, p. 468.
17. Ibid., p. 446.
18. Ibid., p. 444.
19. Ibid., p. 445.
20. Ibid., p. 446.
21. Ibid., p. 443.
22. Ibid., p. 469.
23. Ibid.
24. Ibid.
25. Ibid.
26. Elliot, 4:102.
27. Ibid., p. 71.
28. Ibid., 3:464.
29. Ibid., 2:108–9.
30. *Federalist Papers,* No. 84.
31. Elliot, 2:108.
32. See Article I, section 10.
33. 114 U.S. 15.
34. Elliot, 3:465.
35. Ibid., pp. 477–78.
36. *Federalist Papers,* No. 36
37. Elliot, 3:229.
38. Ibid., p. 307.
39. Ibid., p. 458.
40. Ibid., p. 255.
41. Ibid., pp. 95–97.
42. Ibid., 2:61.
43. Ibid., p. 342.
44. Ibid., 3:109.
45. Ibid., 4:77–78.
46. Ibid., p. 76.
47. Ibid., pp. 84–87.
48. *Federalist Papers,* No. 21.
49. Elliot, 2:60.
50. Ibid., 3:106.
51. Ibid., p. 479.
52. Ibid., p. 465.
53. Madison, p. 439.
54. Ibid., p. 440.
55. Ibid., p. 441.
56. Ibid.
57. Ibid., p. 440.
58. Ibid., p. 469.
59. Elliot, 3:465.
60. Ibid., 2:278–79.
61. Madison, p. 567.
62. Elliot, 3:465.
63. Ibid., 2:150–51.
64. *Federalist Papers,* No. 84.
65. Madison, p. 455.

CHAPTER

RESTRAINTS ON THE STATES

It will be recalled that the principal distinction of the Union under the Articles of Confederation was "state supremacy." Under the new charter of freedom, the principal characteristic would be "constitutional supremacy." It is therefore especially noteworthy that the Founders wished to leave no doubt concerning the demoting of the states from a position of independent supremacy to one of constitutional subordination.

In Article I, section 8, the Founders had outlined what powers were being granted to the federal government. In doing so they wanted the states to know that they had specifically given up some of their former prerogatives.

This section puts manacles on the states in one of two ways. The first series of provisions contains an absolute prohibition to do any

of the things which had been assigned exclusively to the national government. The second series of provisions allows the states to do certain things, but only with the consent of Congress.

Charles Pinckney of South Carolina considered this section to be one of the most important provisions of the Constitution. Said he:

"This section I consider as the soul of the Constitution—as containing, in a few words, those restraints upon the states, which, while they keep them from interfering with the powers of the Union, will leave them always in a situation to comply with their federal duties—will teach them to cultivate those principles of public honor and private honesty which are the sure road to national character and happiness."[1]

PROVISION

121

From Article I.10.1

No state shall be allowed to enter any treaty, alliance, or confederation.

This provision gives the federal government the RIGHT to prevent, by whatever means are necessary, the invasion of the federal government's exclusive authority to make treaties and alliances and also to prevent any state from entering into any independent confederation.

All of the powers denied to the states in this section are those which are specifically granted to the national government in section 8. The states had exercised these powers under the Articles of Confederation and had nearly wrecked the government. That is why the Founders took this extra precaution to spell out these powers as belonging to the national government after the adoption of the federal charter.

PROVISION

122

From Article I.10.1

No state shall be allowed to grant letters of marque and reprisal.

This provision reserved the exclusive RIGHT to the federal government to issue letters of marque and reprisal.

The word *marque* is a seal associated with letters of authorization from a sovereign nation to one of its private citizens to seize or destroy (commit reprisal against) the ships or other resources of an enemy.

Such a letter would be dangerous if issued by a single state, since it could in-

volve all of the other states in a conflict with some foreign nation. If it should ever become necessary, such letters must be under the control of the Congress, which is the only body having the constitutional authority to declare war.

PROVISION 123

From Article I.10.1

No state shall coin money, or emit bills of credit.

This provision reaffirms the exclusive RIGHT of the Congress to coin money and abolishes any right on the part of the states to issue any bills of credit or paper money.

Prohibiting the states from coining money or emitting bills of credit was designed to strike at one of the worst of all the troubles that sprang up during the Revolutionary War. This was the lack of national control over money and credits. In section 8 this power had been specifically reserved to the national government so that there would be a central control of whatever medium was used as legal tender in commercial transactions.

The discussion among the early Founders clearly illustrates their apprehension concerning paper money and the need to establish sound, honest money.

During the debates they answered the following questions:

- *How important is a nation's money system?*

Justice and Equality Impossible Without Sound, Honest Money System

C. Pinckney: "I apprehend these general reasonings will be found true with respect to paper money: That experience has shown that, in every state where it has been practised since the revolution, it always carries the gold and silver out of the country, and impoverishes it — that, while it remains, all the foreign merchants, trading in America, must suffer and lose by it; therefore, that it must ever be a discouragement to commerce — that every medium of trade should have an intrinsic value, which paper money has not; gold and silver are therefore the fittest for this medium, as they are an equivalent, which paper can never be — that debtors in the assemblies will, whenever they can, make paper money with fraudulent views — that in those states where the credit of the paper money has been best supported, the bills have never kept to their nominal value in circulation, but have constantly depreciated to a certain degree....

"But above all, how much will this section tend to restore your credit with foreigners—to rescue your national character from that contempt which must ever follow the most flagrant violations of public faith and private honesty! No more shall paper money, no more shall tender-laws, drive their commerce from our shores, and darken the American name in every country where it is known. No more shall our citizens conceal in their coffers those treasures which the weakness and dishonesty of our government have long hidden from the public eye.

The firmness of a just and even system shall bring them into circulation, and honor and virtue shall be again known and countenanced among us. No more shall the widow, the orphan, and the stranger, become the miserable victims of unjust rulers. Your government shall now, indeed, be a government of laws. The arm of Justice shall be lifted on high, and the poor and the rich, the strong and the weak, shall be equally protected in their rights. Public as well as private confidence shall again be established; industry shall return among us; and the blessings of our government shall verify that old, but useful maxim, that with states, as well as individuals, honesty is the best policy."[2]

Issuing of First Paper Money a Disaster

MacLaine: "The experience of this country, for many years, has proved that such emissions involve us in debts and distresses, destroy our credit, and produce no good consequences."[3]

Historical Experience with Paper Money Demonstrates Ruinous Effects

C.C. Pinckney: "It had corrupted the morals of the people; it had diverted them from the paths of honest industry to the ways of ruinous speculation; it had destroyed both public and private credit, and had brought total ruin on numberless widows and orphans."[4]

• *What does paper money do to gold and silver?*

Paper Money Drives Gold and Silver out of Circulation

MacLaine: "Taxes must be paid in gold or silver coin, and not in imaginary money.... It is well known that in this country gold and silver vanish when paper money is made.... People will not let their hard money go, because they know that paper money cannot repay it."[5]

• *What impact does paper money have on society?*

Making Paper Money Legal Tender Breeds Innumerable Vices

Lee: "Permit me to ask if there be an evil which can visit mankind so injurious and oppressive, in its consequence and operation, as a tender-law?... It breaks down the moral character of your people, robs the widow of her maintenance, and defrauds the orphan of his food. The widow and orphan are reduced to misery, by receiving, in a depreciated value, money which the husband and father had lent out of friendship. This reverses the natural course of things. It robs the industrious of the fruits of their labor, and often enables the idle and rapacious to live in ease and comfort at the expense of the better part of the community....

"How are your domestic creditors situated?... I mean the military creditor—the man who, by the vices of your system, is urged to part with his money for a trivial consideration—the poor man, who has the paper in his pocket for which he can receive little or nothing.... These unfortunate men are compelled to receive paper instead of gold—paper which nominally represents something, but which in reality represents almost nothing."[6]

Paper Money Destroys Security and Property

Wilson: "What is the consequence even at this moment? It is true, we have no tender law in Pennsylvania; but the moment you

are conveyed across the Delaware, you find it will haunt your journey, and follow close upon your heels. The paper passes commonly at twenty-five or thirty percent discount. How insecure is property!"[7]

Paper Money Allows States to Injure the Weak and Impair Contracts

Randolph: "Does not the prohibition of paper money merit our approbation? I approve of it because it prohibits tender laws, secures the widows and orphans, and prevents the states from impairing contracts."[8]

Paper Money Breeds Lust for Power and Decays Patriotism

Turner: "The operation of paper money, and the practice of privateering, have produced a gradual decay of morals; introduced pride, ambition, envy, lust of power; produced a decay of patriotism, and the love of commutative justice."[9]

Half the Cases in Courts Have Arisen over the Injustice of Paper Money

McKean: "By this means, Sir, some security will be offered for the discharge of honest contracts, and an end put to the pernicious speculation upon paper emissions —medium which has undermined the morals, and relaxed the industry of the people, and from which one-half of the controversies in our courts of justice has arisen."[10]

• *What impact will this clause have on bank notes which have been declared "legal tender"?*

This Clause Prohibits Bank Notes If They Have Been Declared Legal Tender

Madison: "If the notes of state banks, . . . whether chartered or unchartered, be made a legal tender, they are prohibited; if not made a legal tender, they do not fall within the prohibition clause."[11]

• *What has our experience taught us about paper money?*

States Irresponsible in Issuing Paper Money

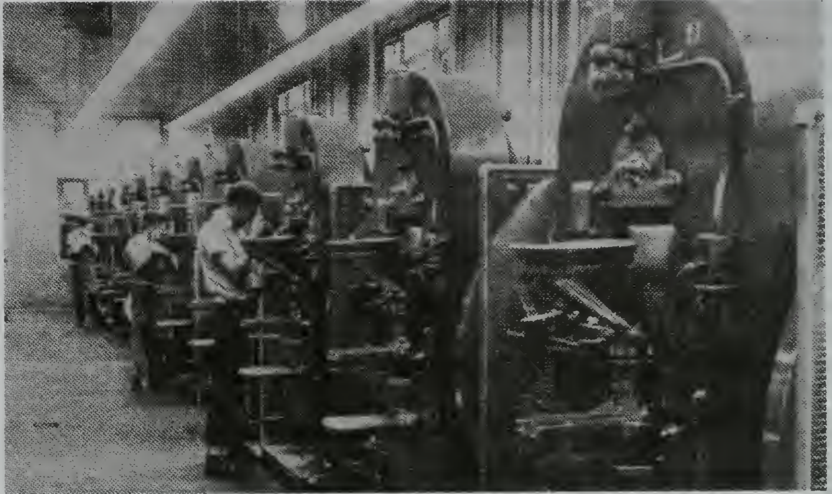
Hamilton: "The additional securities to republican government, to liberty, and to property, to be derived from the adoption of the plan under consideration, consist chiefly . . . in the precautions against the repetition of those practices on the part of the State governments which have undermined the foundations of property and credit, have planted mutual distrust in the breasts of all classes of citizens, and have occasioned an almost universal prostration of morals."[12]

• *What kind of a money system should the country have?*

The Country Needs a Uniform Coinage of Uniform Value

Madison: "A right of coinage in the particular States could have no other effect than to multiply expensive mints and diversify the forms and weights of the circulating pieces. . . .

"The extension of the prohibition to bills of credit must give pleasure to every citizen in proportion to his love of justice and his knowledge of the true springs of public prosperity. The loss which America has sustained since the peace, from the pestilent effects of paper money on the necessary confidence between man and man, on the necessary confidence in the public councils, on the industry and morals of the people, and on the character of republican government, constitutes an



Congress was given the power to coin money. Shown here are the coin presses at the mint in Denver, Colorado.

enormous debt against the States chargeable with this unadvised measure, which must long remain unsatisfied; or rather an accumulation of guilt, which can be expiated no otherwise than by a voluntary sacrifice on the altar of justice of the power which has been the instrument of it. In addition to these persuasive considerations, it may be observed that the same reasons which show the necessity of denying to the States the power of regulating coin prove with equal force that they ought not to be at liberty to substitute a paper medium in the place of coin. Had every State a right to regulate the value of its coin, there might be as many different currencies as States, and thus the intercourse among them would be impeded; retrospective alterations in its value might be made, and thus the citizens of other States be injured, and animosities be kindled among the States themselves. The subjects of foreign powers might suffer from the same cause, and hence the Union be discredited and embroiled by the indiscretion of a single member. No one of these mischiefs is less incident to a power in the States to emit paper money than to coin gold or silver. The power to make anything but gold and silver a tender in payment of debts is withdrawn from the States on the same principle with that of issuing a paper currency."[13]

• *What was the purpose of the Founders when they included this provision?*

Wording Absolute

Wilson and Sherman: "Moved to insert, after the words 'coin money,' the words, 'nor emit bills of credit, nor make any thing but gold and silver coin a tender in payment of debts,' making these prohibitions absolute."[14]

This Provision Would Stamp Out Irredeemable Paper Money Forever

Sherman: "Thought this a favorable crisis for crushing paper money. If the consent of the legislature could authorize emissions of it, the friends of paper money would make every exertion to get into the legislature in order to license it."[15]

PROVISION

124

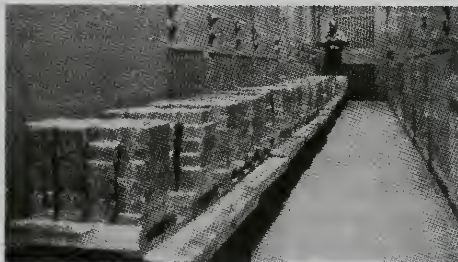
From Article I.10.1

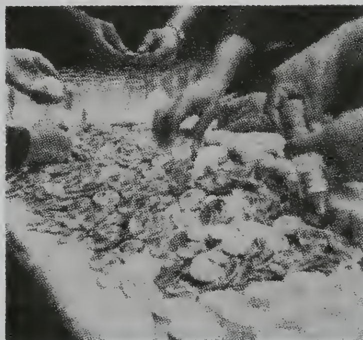
No state shall make anything but gold and silver coin a tender in payment of debts.

This provision gives the Congress the exclusive RIGHT and also the responsibility to provide a national money system based on gold and silver, and no state is allowed to use anything else in payment of its debts.

When the Congress ruled out paper currency as a medium of exchange, it was trying to guarantee that, from this point on, the American people would have honest money based on precious metal. The states were also restricted so that they would stay on a solid system of honest money based on gold and silver.

Unfortunately, however, precious metal is a very awkward and cumbersome means of transacting business. The people virtually demand paper money, especially for larger transactions. Initially the federal authorities thought they had solved this problem by letting the private banks issue notes redeemable in gold and silver. As we saw earlier, Alexander Hamilton, who had promoted this idea, admitted by 1798 that it was a mistake. The banks had a tendency to issue far more paper money than they had gold and silver to redeem it. In our discussion of Principle 87, we noted that Hamilton decided that it would have been better to have the federal government issue bills of credit, and have them 100 percent redeemable in precious metal.





Paper money was ruled out as a medium of exchange, with gold and silver coins named as the legal tender for debts.

Thomas Jefferson realized that in case of war it would not be possible to have the resources of precious metal immediately available and there would be a temptation to print more money than the treasury could redeem. Jefferson therefore conceived of an ingenious device by which the American people could borrow from themselves without paying any interest. The following quotations from his writings will emphasize three points:

1. In a time of crisis, issue whatever federal currency is necessary to save the nation.
2. At the same time impose a tax of a comparable amount to redeem the extra currency within a designated time.
3. By this means the money goes out to buy the goods and services needed for the war and then is siphoned back into the treasury through taxes after it has done its work, thereby avoiding any long-range inflation.

Need to Provide Sound Money

Here is what Jefferson said on this subject:

"Treasury notes of small as well as high denomination, bottomed on a tax which would redeem them in ten years, would place at our disposal the whole circulating medium of the United States; a fund of credit sufficient to carry us through any probable length of war. A small issue of such paper is now commencing. It will immediately supersede the bank paper, nobody receiving that now but for the purposes of the day, and never in payments which are to lie by for any time. In fact, all the banks having declared they will not give cash in exchange for their own notes, these circulate merely because there is no other medium of exchange. As soon as the treasury notes get into circulation, the other will cease to hold any competition with them. I trust that another year will confirm this experiment and restore this fund to the public, who ought never more to permit its being filched from them by private speculators and disorganizers of the circulation."[16]

"[One] great measure necessary to ensure us permanent prosperity should ensure resources of money by the suppression of all paper circulation during peace, and licensing that of the nation alone during war. The metallic medium of which we should be possessed at the commencement of a war would be a sufficient fund for all the loans we should need through its continuance; and if the national bills issued be bottomed (as is indispensable) on pledges of specific taxes for their redemption within certain and moderate epochs, and be of proper denominations for circulation, no interest on them would be necessary or just because they would answer to everyone the purposes of the metallic money withdrawn and replaced by them."[17]

States Forced to Violate Constitution

For nearly a quarter of a century Americans have had a crippled money system operating in violation of the Constitution. The irredeemable paper money issued by the Federal Reserve System is fiat money which cannot be turned in for gold or silver but is declared on its face to be "legal tender for all debts, public and private." There is no authorization for this kind of money in the United States Constitution. Furthermore, the U.S. Treasury is issuing "silverless" coins and has discontinued issuing gold coins. This forces the states to pay their debts in unconstitutional money, which in turn forces them to violate the Constitution by not paying their debts in gold or silver coin as required by Article I, section 10, clause 1.

Someday Americans must elect a Congress that will give them a sound and honest money system.

PROVISION

125

From Article I.10.1

No state shall pass a bill of attainder.

This gives all American people the RIGHT not to be declared outlaws or convicted of a crime by legislative enactment instead of by a fair trial with a jury.

This problem has been previously discussed at length under Principle 110.

PROVISION

126

From Article I.10.1

No state shall pass any ex post facto law.

This gives the American people of any state the RIGHT not to be penalized for an act which was not subject to any such penalty when the act occurred.

This protection has been discussed earlier under Principle 111.

PROVISION

127

From Article I.10.1

No state shall pass any law impairing the obligations of existing contracts.

This provision gives the people the RIGHT to enter into legal agreements which cannot be altered or made illegal by an act of the state legislature. This provision was designed to protect not only contracts between individuals but also contracts between individuals and the state.

The violation of existing contracts by both the states and the federal government is more commonplace than might be supposed. Here are some examples which violate the *ex post facto* clause as well as the impairing-of-contracts clause:

1. Suspending payments on mortgages or debts during a depression.
2. Compelling creditors to take paper money in payment for debts in spite of contracts specifically providing that payment must be in gold or silver.
3. Imposing an embargo on foreclosures

against homes or farms during a depression.

Usually these have been justified on the argument that the *ex post facto* provision was intended only for criminal cases and that the impairing of contracts is done as a matter of "social justice" in an emergency. At the Constitutional Convention some of the delegates anticipated these situations and questioned the sweeping manner in which these clauses were written.

However, the prevailing view was that these provisions would prevent political pressure groups from committing acts of injustice against their own citizens as well as those of other states:

State Legislatures Must Not Use Power to Impair Contracts or Destroy Rights

Randolph: "It must be promotive of virtue and justice, and preventive of injustice and fraud. If we take a review of the calamities which have befallen our reputation as a people, we shall find they have been produced by frequent interferences of the state legislatures with private contracts."[18]

Restrictions on States to Prevent Hostility and Retribution Among Them

Hamilton: "Laws in violation of private contracts, as they amount to aggressions on the rights of those States whose citizens are injured by them, may be considered as another probable source of hostility. We are not authorized to expect that a more liberal or more equitable spirit would preside over the legislations of the individual States hereafter, if unrestrained by any additional checks, than we have heretofore seen in too many instances disgracing their several codes. We have observed the disposition to retaliation excited in Connecticut, in consequence of the enormities perpetrated by the legislature of Rhode Island; and we reasonably infer that, in similar cases under other circumstances, a war, not of *parchment*, but of the sword, would chastise such atrocious breaches of moral obligation and social justice."[19]

PROVISION

128

From Article I.10.1

No state shall grant any title of nobility.

This further secured the RIGHT of the American people not to have any level of government creating an aristocracy of privileged citizens.

Here again we have the same restriction against the states which the Constitution had imposed against the national government in section 9, clause 8. The delegates had bitter memories of the constant support of George III by the House of Lords, which exhibited an arrogance and irresponsibility which seemed to characterize the entire peerage of Britain at that time. The Constitutional Convention was determined that this corruption of the body politic by an exclusive and elite aristocracy should be excluded from the American culture on both the national and the local level.

PROVISION

129

From Article I.10.2

Without the consent of Congress, no state shall lay any duties on imports or exports.

This provision gives Congress the RIGHT to prevent any state or group of states from disrupting the common market with duties on imports or exports.

Shortly after the Revolutionary War, the states almost disunited over the arbitrary and exorbitant duties on imports and exports. The Founders were firmly determined to eliminate this source of contention between the states.

The following quotations from the debates reflect the intensity of feeling on this subject.

The Importance of a Common Market Without State Taxes on Imports or Exports

Madison: "The exporting states wished to retain the power of laying duties on exports, to enable them to pay the expenses incurred. The states whose produce is exported by other states were extremely jealous, lest a contribution should be raised of them by the exporting states, by laying heavy duties on their commodities. If this clause be fully considered, it will be found to be more consistent with justice and equity than any other practicable mode; for, if the states had the exclusive imposition of duties on exports, they might raise a heavy contribution from other states, for their own exclusive emolument."[20]

This Provision Essential to Avoid Exploitation of Advantages in Certain States

Mason: "Observed that particular states might wish to encourage, by impost duties, certain manufactures for which they enjoyed natural advantages, as Virginia, the manufacture of hemp, etc."[21]

This Is Needed to Protect Inland States

G. Morris: "Thought the regulation necessary, to prevent the Atlantic states from endeavoring to tax the western states."[22]

The Constitution prohibited the states, unless they had the consent of Congress, from laying duties on imports or exports.

PROVISION

130

From Article I.10.2

Any state setting up laws which lay imposts or duties on imports or exports to cover the costs of inspections shall be subject to revision and control by the Congress, and any funds in excess of actual costs shall be turned over to the U. S. Treasury.

This provision is to give the Congress the RIGHT to supervise and control any state imposts or duties on imports or exports.

It will be recalled that all foreign commerce as well as interstate commerce was placed under the exclusive jurisdiction of the federal government (Article I, section 8, clause 3). The present provision was to reinforce the position of the federal government and prevent the states from interfering with either interstate or foreign commerce.

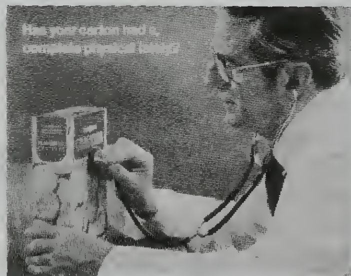
The court has allowed rather broad inspection powers of imports by the states in order to protect the public when these goods are placed on sale. In a decision rendered in 1883, the Supreme Court held that inspection rights of the states include the right to inspect "the quality of the article, origin, capacity, dimensions, and weight of package, mode of putting up, marking and branding of various kinds."[23]

Why the Inspection Provision Was Included

The inspection provision was included as a result of a motion described in Madison's notes:

Mason: "Urged that the restrictions on the states would prevent the incidental duties necessary for the inspection and safekeeping of their produce, and be ruinous to the staple states, as he called the five southern states, he moved as follows—'provided nothing herein contained shall be construed to restrain any state from laying duties upon exports for the sole purpose of defraying the charges of inspecting, packing, storing and indemnifying the losses in keeping the commodities in the care of public officers, before exportation.' In answer to a remark which he anticipated, to wit, that the states could provide for these expenses, by a tax in some other way, he stated the inconvenience of requiring the planters to pay a tax before the actual delivery for exportation."[24]

Madison: "It only says that the *net* produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, which necessarily implies that all contingent charges shall have been previously paid."[25]



The states are allowed to inspect the quality of articles imported into their jurisdiction.

PROVISION 131

From Article I.10.3

Without the consent of Congress, no state shall lay any duty on a ship's tonnage.

This gives the right of all ports to compete equally unless Congress feels that the upkeep of a particular port requires additional funding.

A duty on tonnage was a tax on the cubical capacity of a ship. It was designed to cover the cost of dredging out the harbor, building breakwaters, and putting in the piling for the construction of piers. Obviously, it would be to the advantage of the federal government to assist those ports which were needed for naval operations or acted as military bases. In all other cases they were to be treated equally.

PROVISION 132

From Article I.10.3

Without the consent of Congress, no state shall keep troops or ships of war in time of peace.

This provision gives the Congress the exclusive RIGHT to determine what armed forces shall be maintained in peacetime.

The great fear of the Founders was the threat represented by standing armies in the hands of ambitious politicians. This provision gave the Congress the power to intervene at any time if it saw a governor or military leader in a state mobilizing a body of troops or building ships of war.

It should be mentioned that the state militia, which exists for the protection of the people and is made up of non-professional civilians, is not considered to be "troops" within the meaning of this clause.

No state may keep troops in time of peace, unless Congress allows otherwise.

PROVISION 133
From Article I.10.3

Without the consent of Congress, no state shall enter into any agreement or compact with another state or with a foreign power.

This provision gives the people the RIGHT not to have any state enter into any alliance, confederation, or foreign compact which might involve the nation in a civil insurrection or a foreign conflict.

In a very real sense this provision anticipated and tried to prevent the tragic circumstances which led to the American Civil War. A combination of "secession" and "confederation" in violation of this provision cost the American people nearly a million lives. It is important to point out, however, that there were violations of the Constitution on both sides before the contending forces finally erupted in civil war. It is also interesting that the threat of secession and a separate confederation was a haunting spectre which had hung over the United States almost from its inception. New England, as we noted earlier, was talking of secession and a separate confederation clear up until the end of the War of 1812.

Some compacts between states are very desirable, however. Take, for example, the compact between the five states which share the water of the Colorado River. Since this water originates primarily in Utah and Colorado, it was a wise proviso that any agreement between these two states would have to receive the approval of Congress so that the interests of the three other states located downstream would be properly protected.

PROVISION 134
From Article I.10.3

Without the consent of Congress, no state shall engage in war unless actually invaded or in such imminent danger that action must be taken before the consent of Congress can be obtained.

This provision gives the people the RIGHT not to have some state unilaterally start a war which would implicate the rest of the nation, and at the same time it gives any state the inherent RIGHT of self-defense in case it is attacked and there is not sufficient time or opportunity to obtain the consent of Congress.

The history of the nation illustrates the heated disputes which may develop between states or with neighboring countries. Several border states have carried on perpetual feuds with Mexico over disputed land or law-enforcement policies. Many states have also approached open warfare in their earlier history because of disputes concerning water, boundaries, extraditions, and cattle drives.

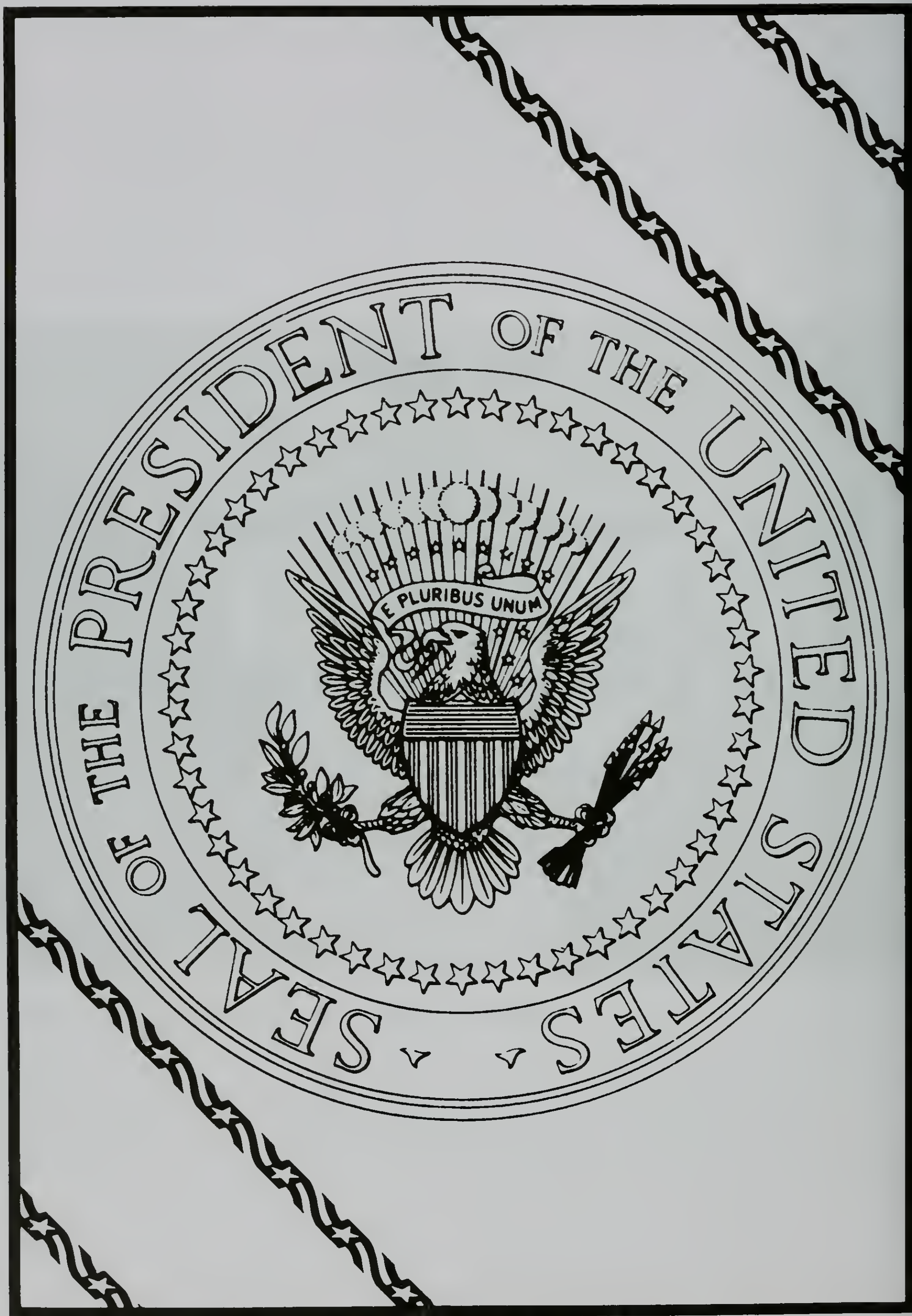
1. Elliot, 4:333.
2. Ibid., pp. 334, 336.
3. Ibid., p. 174.
4. Ibid., p. 306.
5. Ibid., p. 188.
6. Ibid., 3:179.
7. Ibid., 2:486.
8. Ibid., 3:207.
9. Ibid., 2:31.
10. Ibid., p. 279.
11. Ibid., 4:608.
12. *Federalist Papers,* No. 85.
13. Ibid., No. 44.
14. Madison, p. 477.
15. Ibid., p. 478.
16. Ford, 9:503.
17. Ibid., 10:36.
18. Elliot, 3:478.
19. *Federalist Papers,* No. 7.
20. Elliot, 3:483.
21. Madison, pp. 479–80.
22. Ibid., p. 480.
23. 107 U.S. 38.
24. Madison, p. 557.
25. Elliot, 3:483.

According to the Constitution, no state is to engage in war without the consent of Congress, unless the state must take immediate action to repel an invasion.

The inauguration of George Washington, first President of the United States.

PART THREE

ARTICLE II—
THE EXECUTIVE BRANCH


SEAL OF THE PRESIDENT OF THE UNITED STATES
E PLURIBUS UNUM

CHAPTER

THE MOST POWERFUL POLITICAL OFFICE IN THE WORLD

It would be interesting to know how the Founding Fathers would have reacted if someone had disclosed to them at the Constitutional Convention that within 200 years the President and the executive branch of the United States government would become the power center of the world.

It was the original intent of the Founding Fathers to carefully limit the powers of the federal government.

James Madison pointed out that the Constitution was structured so that "the powers delegated ... to the federal government are few." He also pointed out that "the number of individuals employed under the Constitution of the United States will be much smaller than the number employed under the particular States."[1]

If George Washington Were President Today

In Washington's day there were 350 civilian employees serving a population of 3 million. Today (2007) there are around 300 million or one-hunderd times more people, so if Washington were President today he would have to have at least 35,000 civilian employees to provide the level of service he maintained in the 1790s.

Since we have around 5.7 million government employees, that makes the ratio of government workers nearly 200 times greater in our day than in Washington's era.

Six Areas of Constitutional Responsibility

The Founders contemplated heavy responsibilities for the President, but limited him to six areas. Here are those six areas of presidential responsibility as they apply to our own day. The President is:

1. Chief of state over 300 million Americans.
2. Commander in chief over a military force of 3 million.
3. The chief executive officer of the whole executive branch of the government.
4. The chief diplomat in handling foreign relations.
5. The chief architect for needed legislation.
6. The conscience of the nation in granting pardons or reprieves when he feels justice requires them.

The Founders would be amazed to learn that under the influence of a modern centralist philosophy, the President has been burdened with a host of other responsibilities never dreamed of by the Founders.

Here are some of the things Congress has assigned to the President:

1. The responsibility of maintaining full employment for the work force of the entire nation.
2. The task of ensuring a high level of agricultural prosperity.
3. The task of developing a national housing program.
4. The task of supervising the exclusive distribution of atomic energy resources.
5. Underwriting hundreds of billions of dollars in private loans and private insurance programs.
6. Providing various kinds of federal relief for the victims of natural disasters throughout the country.
7. Administering a national welfare program.
8. Administering a national Medicare and Medicaid program.
9. Administering a national social security program.
10. Allocating billions of dollars for educating the young.
11. Settling major labor union-management disputes.
12. Administering a network of health agencies.
13. Administering the environmental protection of the entire nation.
14. Administering nearly 40 percent of the nation's land area and its resources.
15. Administering supervisory control over the discovery and development of all major energy resources.
16. Regulating all major United States industries such as steel, automobile manufacturing, coal mining, oil production, metal mining, and so forth.
17. Supervising all radio and television broadcasting in the United States as a prerequisite to issuing licenses.

18. Monitoring the manufacturing and distribution of food and drugs and requiring special permission before any drug can be distributed.
19. Initiating various types of federal programs on a regional basis to replace many powers and activities originally reserved to the sovereign states.

It is rather astonishing that none of the above additions to the President's powers and responsibilities have been authorized by a constitutional amendment.

Furthermore, they are all outside the original intent of the Founders as set forth by Madison when he said:

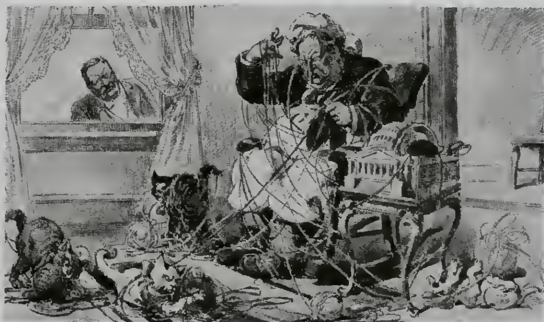
"The powers delegated by the proposed Constitution to the federal government are few and defined.... The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State."[2]

The concentrating of all this power in the executive department was done with the best of intentions and with glowing promises. However, experience is demonstrating that this theory of "problem solving at the center" has turned out to be as counter-productive as the Founders warned it would be. Not only has it failed to fulfill its promises in the United States, but similar experiments have failed all over the world. It is what the Founders would call a "failure formula."

There is a gradual consensus developing on all fronts that this approach has four major drawbacks.

1. It is unbelievably expensive. Many things cost from double to a hundred times more when done by the federal government than they do when assigned to a competitive private contractor. The recent Grace Commission report demonstrated the destructive and destabilizing extent of the cost factor in government today.
2. By its very nature, the Founders warned, government is sluggish and inefficient. There are some things it must do, but the Founders said these chores should be kept to a minimum because of the inefficiency factor.
3. It places billions of dollars at the disposal of the executive department which can be (and have been) used to intimidate both the members of Congress and the states.
4. It is impossible for one human being to effectively administer all of the things we have assigned to the President of the United States.

We will now discuss how the Founders originally designed the office of President, and quote some of their more significant comments concerning this high office.



Over the years, increasing amounts of power have been centered in the President. In this 1910 illustration, President William Howard Taft is ensnarled in the demands of office, while former President Theodore Roosevelt peers in.

PROVISION

135

From Article II.1.1

The executive power to administer the affairs of the United States shall be vested in a single individual, the President of the United States.

This provision gives the President the RIGHT to administer all of the duties assigned to the executive branch of the United States government.

It may surprise the modern student to learn that one of the big issues at the Constitutional Convention was whether to have a single president or several. James Wilson originally emphasized the need to fix responsibility in a single executive, but Governor Edmund Randolph of Virginia thought there was greater safety in numbers and recommended at least three presidents—one to represent New England, one to represent the middle states, and one to represent the south. The New Jersey Plan also called for several presidents.

The Founders had to find answers to some very substantive questions such as the following:

- *Which arrangement will provide the most vitality and efficiency?*

A Single Executive Will Provide Greater Energy and Efficiency

Hamilton: "Energy in the executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy....

"A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government....

"The ingredients which constitute energy in the executive are unity; duration; and adequate provision for its support; and competent powers....

"That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished....

"Whenever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of opinion. If it be a public trust or office in which they are clothed with equal dignity and authority, there is peculiar danger of personal emulation and even animosity. From either, and especially from all these causes, the most bitter dissensions are apt to spring. Whenever these happen, they lessen the respectability, weaken the authority, and distract the plans and operations of those whom they divide. If they should unfortunately assail the supreme executive magistracy of a

country, consisting of a plurality of persons, they might impede or frustrate the most important measures of the government in the most critical emergencies of the state. And what is still worse, they might split the community into the most violent and irreconcilable factions, adhering differently to the different individuals who composed the magistracy.... "

• *What about the problem of fixing responsibility for mistakes when they occur?*

Hamilton continues: "But one of the weightiest objections to a plurality in the executive ... is that it tends to conceal faults and destroy responsibility. Responsibility is of two kinds—to censure and to punish. The first is the more important of the two, especially in an elective office. Men in public trust will much oftener act in such a manner as to render them unworthy of being any longer trusted, than in such a manner as to make them obnoxious to legal punishment. But the multiplication of the executive adds to the difficulty of detection in either case. It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage of misfortune are sometimes so complicated that where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable....

"I clearly concur in opinion ... that 'the executive power is more easily confined when it is ONE'; that it is far more safe there should be a single object for the jealousy and watchfulness of the people; and, in a word, that all multiplication of the executive is rather dangerous than friendly to liberty."[3]

Why the Convention Felt the Executive Power Must Be in One Person

W. Davie: "With respect to the unity of the executive, the superior energy and secrecy wherewith one person can act, was one of the principles on which the Convention went. But a more predominant principle was, the more obvious responsibility of one person. It was observed that, if there were a plurality of persons, and a crime should be committed, when their conduct came to be examined, it would be impossible to fix the fact on any one of them, but that the public were never at a loss when there was but one man."[4]

A Single Executive Can Act with Vigor but Cannot Evade Accountability

Wilson: "The next good quality that I remark is, that the *executive authority is one*. By this means we obtain very important advantages. We may discover from history, from reason, and from experience, the security which this furnishes. The executive power is better to be trusted when it has no screen. Sir, we have a responsibility in the person of our President; he cannot act improperly, and hide either his negligence or inattention; he cannot roll upon any other person the weight of his criminality; no appointment can take place without his nomination; and he is

responsible for every nomination he makes. We secure *vigor.* We well know what numerous executives are. We know there is neither vigor, decision, nor responsibility, in them, add to all this, that officer is placed high, and is possessed of power far from being contemptible, yet not a *single privilege* is annexed to his character; far from being above the laws, he is amenable to them in his private character as a citizen, and in his public character by *impeachment.*"[5]

President Like the Captain of a Ship

Wilson: "Clearly, sir, he holds the helm, and the vessel can proceed neither in one direction nor another, without his concurrence."[6]

Single Executive Best Safeguard Against Tyranny

Wilson: "Said that unity in the executive, instead of being the foetus of monarchy, would be the best safeguard against tyranny."[7]

• *Which system would work best for a large country?*

President Must Have Sufficient Vigor to Govern a Large Country

G. Morris: "It has been a maxim in political science that republican government is not adapted to a large extent of country, because the energy of the executive magistracy cannot reach the extreme parts of it. Our country is an extensive one. We must either then renounce the blessings of the Union or provide an executive with sufficient vigor to pervade every part of it."[8]

• *Which system is the most likely to function effectively in a time of crisis?*

A Plural Executive Would Be Disastrous in Time of Crisis

Butler: "Contended strongly for a single magistrate, as most likely to answer the purpose of the remote parts. If one man should be appointed, he would be responsible to the whole, and he would be impartial to its interests. If three or more should be taken from as many districts, there would be a constant struggle for local advantages. In military matters this would be particularly mischievous. He said his opinion on this point had been formed under the opportunity he had had of seeing the manner in which a *plurality of military heads* distracted Holland, when threatened with invasion by the imperial troops. One man was for directing the force to the defense of this part, another to that part of the country, just as he happened to be swayed by prejudice or interest."[9]

Great Inconvenience If Executive Power Divided

Gerry: "Was at a loss to discover the policy of three members for the executive. It would be extremely inconvenient in many instances, particularly in military matters, whether relating to the militia, an army, or a navy. It would be a general with three heads."[10]

• *Which system has worked best among the states?*

The States Are All Using a Single Executive

Wilson: "One fact has great weight with him. All the thirteen states, though agreeing in scarce any other instance, agree in placing a single magistrate at the head of the government. The idea of three heads had taken place in none. The degree of power is, indeed, different; but

there are no coordinate heads. In addition to his former reasons for preferring a unity, he would mention another. The *tranquility,* not less than the vigor, of the government, he thought, would be favored by it. Among three equal members, he foresaw nothing but uncontrolled, continued and violent animosities; which would not only interrupt the public administration but diffuse their poison through the other branches of government, through the states, and at length through the people at large. If the members were to be unequal in power, the principle of opposition to the unity was given up. If equal, the making them an odd number would not be a remedy. In courts of justice there are two sides only to a question. In the legislative and executive departments questions have commonly many sides. Each member, therefore, might espouse a separate one, and no two agree."[11]

PROVISION 136

From Article II.1.1

The President shall hold office during a term of four years.

This provision gave the people the RIGHT to review the record of the President every four years and decide whether or not they wanted a change in administration.

Two important questions arose during the Convention debates:

1. Was four years the most desirable length for the President's term of office?
2. Should the President be allowed to run for more than one term?

Concerning the length of time for the President's term of office, Wilson of Pennsylvania preferred three years with authorization for reelection. Mason, on the other hand, favored a term of seven years without permitting the President to run for reelection. He felt this was important so that the President would not waste any of his time as the national executive in campaigning for another election. Bedford of Delaware protested that the people might make a mistake and seven years could prove disastrous under a poor President. One of the reasons a number of the delegates favored a long term for the President was because they were quite certain that Washington would be elected to that high office. They had so much confidence in him that it was difficult for them to imagine what it would be like with a man of lesser ability or integrity occupying that position. After considerable debate it was decided that the term should be for four years.

However, the next question took longer to decide. Should the President be allowed to run for more than one term of office?

When a straw ballot was taken to see if the term of the President should be limited to a single period of four years, it was observed that Washington voted against it. Since it was universally felt that Wash-

ington would be the first President, the Founders assumed that Washington felt it would take more than four years to set up the new government. They therefore wrote the Constitution without any limitation on the number of terms a President might serve.

Meanwhile, however, Jefferson wrote from France that he was strongly in favor of only one term for the President, but later he changed his mind and served two terms himself. At a later date he wrote that he felt the example of four Presidents retiring at the end of eight years (Washington, Jefferson, Madison, and Monroe) should discourage any future President from seeking a third term.

President Grant did seek a third term in 1880, but he was defeated in the Republican nominating convention. Theodore Roosevelt, who served three years of the second term of McKinley and a four-year term thereafter, also sought a third term in 1912. However, he failed to get the nomination in the Republican convention and was defeated when he ran on a third-party independent ticket. Franklin D. Roosevelt was the first President to be elected for a third term as well as a fourth. After his death an amendment was immediately passed prohibiting a President from serving more than two terms. (See Twenty-second Amendment.)

At the Constitutional Convention several important questions had to be answered in connection with this provision. Here are the major ones:

- *Should there be a limit to the length of time a President can serve?*

Disadvantages of a Limited Term

W. Davie: "A dispute arose in the Convention concerning the reeligibility of the President.... It was said that such an exclusion would be improper for many reasons; that if an enlightened, upright man had discharged the duties of the office ably and faithfully, it would be depriving the people of the benefit of his ability and experience, though they highly approved of him; that it would render the President less ardent in his endeavors to acquire the esteem and approbation of his country, if he knew that he would be absolutely excluded after a given period; and that it would be depriving a man of singular merit even of the rights of citizenship. It was also said, that the day might come, when the confidence of Ameirca would be put in one man, and that it might be dangerous to exclude such a man from the service of his country. It was urged, likewise, that no undue influence could take place in his election; that, as he was to be elected on the same day throughout the United States, no man could say to himself, *I am to be the man.*"[12]

Limited Term Might Diminish Sense of Public Responsibility

Randolph: "That which has produced my opinion against the limitation of his eligibility is this—that it renders him more independent in his place, and more solicitous of promoting the interest of his constituents; for, unless you put it in his power to be reelected, instead of being attentive to their interests, he will lean to the augmentation of his private emoluments."[13]

Requiring a Change of Leadership During a Crisis Could Pose Great Danger

C. C. Pinckney: "It was thought that to cut off all hopes from a man of serving again in that elevated station, might render him dangerous, or perhaps indifferent to the faithful discharge of his duty. His term of service might expire during

the raging of war, when he might, perhaps, be the most capable man in America to conduct it, and would it be wise and prudent to declare in our Constitution that such a man should not again direct our military operations, though our success might be owing to his abilities? ... It would have been imprudent in us to have put it out of our power to reelect a man whose talents, abilities, and integrity, were such as to render him the object of the general choice of his country."[14]

Limited Tenure May Breed Indifference to Duty

Hamilton: "It is a general principle of human nature that a man will be interested in whatever he possesses, in proportion to the firmness or precariousness of the tenure by which he holds it; will be less attached to what he holds by a momentary or uncertain title, than to what he enjoys by a durable or certain title; and, of course, will be willing to risk more for the sake of the one than for the sake of the other.... The inference from it is that a man acting in the capacity of chief magistrate, under a consciousness that in a very short time he *must* lay down his office, will be apt to feel himself too little interested in it to hazard any material censure or perplexity from the independent exertion of his powers, or from encountering the ill-humors, however transient, which may happen to prevail, either in a considerable part of the society itself, or even in a predominant faction in the legislative."[15]

The Advantages of Allowing the President More Than One Term

Hamilton: "With a positive duration of considerable extent, I connect the circumstance of re-eligibility. The first is necessary to give to the officer himself the inclination and the resolution to act his part well, and to the community time and leisure to observe the tendency of his measures, and thence to form an experimental estimate of their merits. The last is necessary to enable the people, when they see reason to approve of his conduct, to continue him in his station in order to prolong the utility of his talents and virtues, and to secure to the government the advantage of permanency in a wise system of administration....

"A scheme ... of continuing the Chief Magistrate in office for a certain time, and then excluding him from it ... would be for the most part rather pernicious than salutary.

Hamilton's First Reason

"One ill effect of the exclusion would be a diminution of the inducements to good behavior. There are few men who would not feel much less zeal in the discharge of a duty when they were conscious that the advantages of the station...must be relinquished at a determinate period, than when they were permitted ... a hope of *obtaining*, by *meriting*, a continuance of them.... The desire of reward is one of the strongest incentives of human conduct.... The best security for the fidelity of mankind is to make their interest coincide with their duty. Even the love of fame, the ruling passion of the noblest minds, which would prompt a man to plan and undertake extensive and arduous enterprises for the public benefit.... If he could flatter himself with the prospect of being allowed to finish what he had begun would...deter him from the undertaking, when he foresaw that he must quit the scene before he could accomplish the work, and must commit that, together with his own reputation, to hands which might be unequal or unfriendly to the task. The most to be expected from the generality of men, in such a situation, is the

negative merit of not doing harm, instead of the positive merit of doing good.

Hamilton's Second Reason

"Another ill effect of the exclusion would be the temptation to sordid views, to peculation, and, in some instance, to usurpation. An avaricious man...looking forward to a time when he must at all events yield up the emoluments he enjoyed, would feel a propensity to...make the best use of the opportunity he enjoyed while it lasted, and might not scruple to have recourse to the most corrupt expedients to make the harvest as abundant as it was transitory....

"An ambitious man ... would be ... tempted to ... the prolongation of his power, at every personal hazard, than if he had the probability of answering the same end by doing his duty.

"Would it promote the peace of the community, or the stability of the government, to have half a dozen men who had had credit enough to be raised to the seat of the supreme magistracy wandering among the people like discontented ghosts and sighing for a place which they were destined never more to possess?

Hamilton's Third Reason

"A third ill effect of the exclusion would be the depriving the community of the advantage of the experience gained by the Chief Magistrate in the exercise of his office. That experience is the parent of wisdom is an adage the truth of which is recognized by the wisest as well as the simplest of mankind. What more desirable or more essential than this quality in the governors of nations? Where more desirable or more essential than in the first magistrate of a nation? ...

Hamilton's Fourth Reason

"A fourth ill effect of the exclusion would be the banishing of men from stations in which, in certain emergencies of the State, their presence might be of the greatest moment to the public interest or safety. There is no nation which has not, at one period or another, experienced an absolute necessity of the services of particular men in particular situations, perhaps it would not be too strong to say, to the preservation of its political existence.... A change of the Chief Magistrate, at the breaking out of a war, or at any similar crisis, for another, even of equal merit, would at all times be detrimental to the community, inasmuch as it would substitute inexperience to experience....

Hamilton's Fifth Reason

"A fifth ill effect of the exclusion would be that it would operate as a constitutional interdiction of stability in the administration. By *necessitating* a change of men, in the first office of the nation, it would necessitate a mutability of measures. It is not generally to be expected that men will vary and measures remain uniform. The contrary is the usual course of things. And we need not be apprehensive that there will be too much stability, while there is even the option of changing; nor need we desire to prohibit the people from continuing their confidence where they think it may be safely placed, and where, by constancy on their part, they may obviate the fatal inconveniences of fluctuating councils and a variable policy....

Advantages of an Unlimited Term

"What are the advantages promised to

counterbalance these disadvantages? They are represented to be: 1st, greater independence in the magistrate; 2nd, greater security to the people.... May he not be less willing, by a firm conduct, to make personal enemies, when he acts under the impression that a time is fast approaching, on the arrival of which he not only MAY, but MUST, be exposed to their resentments, upon an equal, perhaps upon an inferior, footing?

"As to the second supposed advantage, there is still greater reason to entertain doubts concerning it. If the exclusion were to be perpetual, a man of irregular ambition ... would, with infinite reluctance, yield to the necessity of taking his leave forever of a post in which his passion for power and pre-eminence had acquired the force of habit. And if he had been fortunate or adroit enough to conciliate the good-will of the people, he might induce them to consider as a very odious and unjustifiable restraint upon themselves a provision which was calculated to debar them of the right of giving a fresh proof of their attachment to a favorite. There may be conceived circumstances in which this disgust of the people, seconding the thwarted ambition of such a favorite, might occasion greater danger to liberty than could ever reasonably be dreaded from the possibility of a perpetuation in office by the voluntary suffrages of the community exercising a constitutional privilege."[16]

Enforced Rotation Might Eliminate Most Qualified Executives

Sherman: "Was ... against the doctrine of rotation, as throwing out of office the men best qualified to execute its duties."[17]

- *What about the possibility of re-election being a motivation for good behavior?*

Limited Term Might Tempt Corruption

G. Morris: "Ineligibility ... tended to destroy the great motive to good behavior, the hope of being rewarded by a reappointment. It was saying to him, make hay while the sun shines."[18]

Sherman: "As the executive magistrate is now re-eligible, he will be on good behavior as far as will be necessary. If he behaves well, he will be continued; if otherwise, displaced on a succeeding election."[19]

Popularity and Need of a Strong Leader May Induce People to Ignore Restriction

G. Morris: "He finds...that the executive is not to be re-eligible. What effect will this have? In the first place, it will destroy the great incitement to merit public esteem, by taking away the hope of being rewarded with a reappointment. It may give a dangerous turn to one of the strongest passions in the human breast. The love of fame is the great spring to noble and illustrious actions. Shut the civil road to glory, and he may be compelled to seek it by the sword. In the second place, it will tempt him to make the most of the short space of time allotted him, to accumulate wealth and provide for his friends. In the third place, it will produce violations of the very Constitution it is meant to secure. In moments of pressing danger, the tried abilities and established character of a favorite magistrate will prevail over respect for the forms of the Constitution."[20]

People Should Be Allowed to Choose Most Capable Candidate

King: "He who has proved himself most fit for an office ought not to be excluded by the Constitution from holding it."[21]

Reelection Should Remain the Reward of Good Service

Ellsworth: "The executive ... should be re-elected if his conduct proved him worthy of it. And he will be more likely to render himself worthy of it if he be rewardable with it. The most eminent characters, also, will be more willing to accept the trust under this condition than if they foresee a necessary degradation at a fixed period."[22]

Disadvantages of Constant Change in Leadership

G. Morris: "Was against a rotation in every case. It formed a political school, in which we were always governed by the scholars, and not by the masters. The evils to be guarded against in this case are—first, the undue influence of the legislature; secondly, instability of councils; thirdly, misconduct in office. To guard against the first, we run into the second evil. We adopt a rotation which produces instability of councils. To avoid Scylla we fall into Charybdis. A change of men is ever followed by a change of measures. We see this fully exemplified in the vicissitudes among ourselves, particularly in the state of Pennsylvania. The self-sufficiency of a victorious party scorns to tread in the paths of their predecessors. Rehoboam will not imitate Solomon. Secondly, the rotation in office will not prevent intrigue and dependence on the legislature.... If the magistrate does not look forward to his re-election to the executive, he will be pretty sure to keep in view the opportunity of his going into the legislature itself. He will have little objection then to an extension of power on a theatre where he expects to act a distinguished part; and will be very unwilling to take any step that may endanger his popularity with the legislature."[23]

PROVISION 137

From Article II.1.1

A Vice President shall be chosen for the same term as the President.

This provision gives the people the RIGHT to have a peaceful transition of power to the Vice President should anything happen to the President.

With the passing of time, the office of Vice President has become increasingly important.

- He must have all of the same qualifications as the President in order to meet the requirements of the Twelfth Amendment.
- He often represents a segment of the population where the President is not as politically strong as he would wish to be.
- The Vice President is one of the President's most prestigious ambassadors of goodwill as he travels among foreign nations.
- As presiding officer in the Senate, he is the only member of the executive branch who is allowed to officially

function as part of the legislative branch.

It is interesting that until the Twenty-fifth Amendment was passed there was no provision for the replacement of a Vice President. The Twenty-fifth Amendment allows the President to nominate a new Vice President, but he must be approved by a majority of both the House and the Senate.

The office of Vice President has been vacant on eighteen different occasions in the nation's history — nine Vice Presidents succeeded to the Presidency, two resigned from office, and seven died while in office.

Following the adoption of the Twenty-fifth Amendment, a vacancy occurred when Vice President Spiro T. Agnew resigned in 1973. President Nixon nominated Congressman Gerald Ford as Vice President, and he was approved by both houses of Congress. Then President Nixon resigned as President and Gerald Ford became President. President Ford then nominated Nelson Rockefeller as Vice President, and after his approval by the House and the Senate, he took office. For the first time in the history of the United States, the American people had both a President and a Vice President who had not been elected into office.

PROVISION 138

From Article II.1.2

The President and the Vice President shall be chosen by the electors from each state. Each state will be entitled to the same number of electors as the sum total of its Representatives and Senators.

This provision gave each state the RIGHT to have the same weight in electing a President that it has in the legislative branch of Congress.

There was a long and heated debate as to the manner in which the President should be elected. It was proposed that he be chosen by the Congress. Others thought that "electors" should be chosen by the people in each state and the electors should then choose the President. Still others thought it would be more appropriate if the governors of the various states made the selection. Even the Senate was proposed as the best means of selecting the national executive. Finally, there were a number who thought that the President should be selected by all of the voters throughout the nation.

For a while it was the more popular view to have Congress select the President, and a resolution to that effect was actually passed. However, when the Constitution was finally drafted, the idea of using "electors" from each of the voting districts proved the more popular. It was feared that if Congress selected the President, he would be under the control of

the national legislature, particularly if he were seeking its favor for a second term. On the other hand, the popular election of the people was rejected on the grounds that, as Alexander Hamilton said, it would invite "tumult and disorder." It was therefore determined to elect the President by an indirect popular vote. In other words, each state would select some of its foremost people as "electors" and these would then carefully and deliberately select the candidates for the high offices of President and Vice President.

The next question was how many electors each state should be allowed and how they should be selected. It was finally decided to give each state the same number of electors as its delegation in Congress (Representatives plus Senators). This weighted the election of the President slightly in favor of the smaller states.

One Provision Proved Impractical

Originally there was a clause attached to this provision which has since been superseded by the Twelfth Amendment. Initially, it was intended that each elector would vote for *two* people. The candidate receiving the most votes became President, and the one receiving the second highest number of votes became Vice President. This entire procedure was set up on the assumption that there would be no political parties and that each state would submit the best candidates it could provide. In other words, it was expected that there would be many candidates.

The theory was good on paper but it did not work out in practice. In the first place, this procedure could saddle a President with a Vice President who might be of a completely opposite political philosophy. This is precisely what happened in 1797 when John Adams, a Federalist, won the Presidency and Thomas Jefferson, an intense anti-Federalist, won the Vice Presidency. Adams wanted a strong national government; Jefferson did not. Jefferson wanted an alliance with France; Adams did not.

By 1800 these divergent political views had developed into opposing political factions, with each one supporting specific candidates for the office of both President and Vice President. However, since each elector was allowed to vote for two candidates, this automatically resulted in a tie for the two candidates sponsored by the majority party. In 1800 Jefferson, who was being sponsored by his supporters for President, tied with Aaron Burr, who was being supported for Vice President. Under the electoral system it was then necessary for the House of Representatives to break the tie. Thirty-six separate ballots were required before Jefferson was finally chosen over Burr. Aaron Burr then became the Vice President. It was obvious that the rise of political parties had completely frustrated the original procedure and that a new electoral system had to be devised. This resulted in the adoption of the Twelfth Amendment in 1804.

The Twelfth Amendment provided that henceforth each state must prepare separate ballots, one for President and the other for Vice President. In order to obtain the electoral votes of a state, a party must carry that state. In other words, the party with the highest popular vote gets all of the electoral votes of that state.

Electoral System Likely to Raise Up Best Qualified Leaders and Avoid Tumult of a Popular Election

Hamilton: "It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder. . . .

"The business of corruption, when it is to embrace so considerable a number of men, requires time as well as means. Nor would it be found easy suddenly to embark them, dispersed as they would be over thirteen States, in any combinations founded upon motives which, though they could not properly be denominated corrupt, might yet be of a nature to mislead them from their duty.

"Another and no less important desideratum was that the executive should be independent for his continuance in the office on all but the people themselves.... This advantage will also be secured, by making his re-election to depend on a special body of representatives, deputed by the society for the single purpose of making the important choice....

"This process of election affords a moral certainty that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States. It will not be too strong to say that there will be a constant probability of seeing the station filled by characters pre-eminent for ability and virtue."[24]

Balance Ought to Be in Favor of Small States

Sherman: "If the legislature were to have the eventual appointment, instead of the Senate, it ought to vote in the case by the states—in favor of the small states, as the large states would have so great an advantage in nominating the candidates."[25]

Popular Election of President Prejudicial to Smaller States

Williamson: "The principal objection against an election by the people seemed to be the disadvantage under which it would place the smaller states."[26]

- *Who will decide how electors are chosen?*

State Legislatures Will Decide How Electors Are Chosen

Spaight: "The President is elected for four years. By whom? By those who are elected in such manner as the state legislatures think proper."[27]

Would It Be Better for the People to Choose the Electors?

Johnston: "Expressed doubts with respect to the persons by whom the electors were to be appointed. Some, he said, were of opinion that the people at large were to choose them, and others thought the state legislatures were to appoint them."[28]

Iredell: "Was of opinion that it could not be done with propriety by the state legislatures, because, as they were to direct the manner of appointing, a law would look very awkward, which should say, 'They gave the power of such appointments to themselves.'"[29]

MacLaine: "Thought the state legislatures might direct the electors to be chosen in what manner they thought proper, and they might direct it to be done by the people at large."[30]

W. Davie: "Was of opinion, that it was left to the wisdom of the legislatures to

direct their election in whatever manner they thought proper."[31]

• *Would it be better to have the President chosen by the House or the Senate?*

Specific Problems Resulting from Appointment by Congress

G. Morris: "Said he would give the reasons of the committee, and his own. The first was the danger of intrigue and faction, if the appointment should be made by the legislature. The next was the inconvenience of an ineligibility required by that mode in order to lessen its evils. The third was the difficulty of establishing a court of impeachments, other than the Senate, which would not be so proper for the trial, nor the other branch, for the impeachment of the President, if appointed by the legislature. In the fourth place, nobody had appeared to be satisfied with an appointment by the legislature. In the fifth place, many were anxious even for an immediate choice by the people. And finally, the sixth reason was the indispensable necessity of making the executive independent of the legislature."[32]

Congressional Appointment of President Violates Separation of Powers

Madison: "If it be a fundamental principle of free government that the legislative, executive and judiciary powers should be *separately* exercised, it is equally so that they be *independently* exercised. There is the same, and perhaps greater reason why the executive should be independent of the legislature than why the judiciary should. A coalition of the two former powers would be more immediately and certainly dangerous to public liberty. It is essential, then, that the appointment of the executive should either be drawn from some source or held by some tenure that will give him a free agency with regard to the legislature. This could not be if he was to be appointable from time to time by the legislature. It was not clear that an appointment in the first instance, even with an ineligibility afterwards, would not establish an improper connection between the two departments. Certain it was that the appointment would be attended with intrigues and contentions that ought not to be unnecessarily admitted."[33]

Selection by the Congress Would Be the Worst Option

G. Morris: "Of all possible modes of appointment, that by legislature is the worst. If the legislature is to appoint, and to impeach, or to influence the impeachment, the executive will be the mere creature of it."[34]

Appointment by Congress Could Lead to Legislative Tyranny

G. Morris: "Opposed the election of the President by the legislature. He dwelt on the danger of rendering the executive uninterested in maintaining the rights of his station, as leading to legislative tyranny. If the legislature have the executive dependent on them, they can perpetuate and support their usurpations by the influence of the taxgatherers and other officers, by fleets, armies, etc. Cabal and corruption are attached to that mode of election."[35]

Use of Electors to Choose President Preferable to the Legislature Appointing Him

Wilson: "To have the executive officers dependent upon the legislative, would certainly be a violation of that principle,

so necessary to preserve the freedom of republics, that the legislative and executive powers should be separate and independent. Would it have been proper that he should be appointed by the Senate? I apprehend that still stronger objections could be urged against that: cabal—intrigue—corruption—every thing bad, would have been the necessary concomitant of every election."[36]

• *What are the advantages of the electoral system of choosing a President?*

Special Electors Best Qualified

Hamilton: "The mode of appointment of the Chief Magistrate of the United States is almost the only part of the system ... which has escaped without severe censure....

"It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any pre-established body, but to men chosen by the people for the special purpose....

"It was equally desirable that the immediate election should be made by men most capable of analyzing the qualities adapted to the station and acting under circumstances favorable to deliberation.... A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to so complicated an investigation....

"Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils. How could they better gratify this than by raising a creature of their own to the chief magistracy of the union? But the convention have guarded against all danger of this sort with the most provident and judicious attention. They have not made the appointment of the President to depend on any pre-existing bodies of men who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust all those who from situation might be suspected of too great devotion to the President in office. No senator, representative, or other person holding a place of trust or profit under the United States can be of the numbers of the electors. Thus without corrupting the body of the people, the immediate agents in the election will at least enter upon the task free from any sinister bias. Their transient existence and their detached situation ... afford a satisfactory prospect of their continuing so, to the conclusion of it."[37]

• *Who should serve as electors?*

Most Enlightened Citizens to Serve in Electoral College

Jay: "The convention ... have directed the President to be chosen by select bodies of electors to be deputed by the people for that express purpose.... This mode has ... vastly the advantage of election by the people in their collective capacity where the activity of party zeal, taking advantage

of the supineness, the ignorance, and the hopes and fears of the unwary and interested, often places men in office by the votes of a small proportion of the electors.

"As the select assemblies for choosing the President ... will in general be composed of the most enlightened and respectable citizens, there is reason to presume that their attention and their votes will be directed to those men only who have become the most distinguished by their abilities and virtue, and in whom the people perceive just grounds for confidence. The Constitution manifests very particular attention to this object.... As an assembly of select electors possess ... the means of extensive and accurate information relative to men and characters, so will their appointments bear at least equal marks of discretion and discernment....

"The President ... so chosen will always be of the number of those who best understand our national interests, whether considered in relation to the several States or to foreign nations, who are best able to promote those interests, and whose reputation for integrity inspires and merits confidence."[38]

• *Why not elect the President and Vice President by a popular vote?*

Dangerous to Leave Election of President to a Popular Vote

Gerry: "He was against a popular election. The people are uninformed, and would be misled by a few designing men.... If he should be so elected, and should do his duty, he will be turned out for it."[39]

Public Easily Misled in Choosing a National Leader

Gerry: "A popular election in this case is radically vicious. The ignorance of the people would put it in the power of some one set of men dispersed through the Union, and acting in concert, to delude them into any appointment."[40]

Mason: "It has been proposed that the election should be made by the people at large; that is, that an act which ought to be performed by those who know most of eminent characters and qualifications should be performed by those who know least."[41]

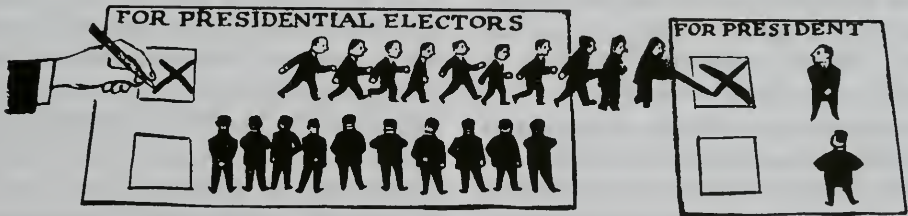
• *After considering all the options, which system seems preferable?*

Electoral College Seemed Less Objectionable Than Available Alternatives

Madison: "There are objections against every mode that has been, or perhaps can be, proposed. The election must be made, either by some existing authority under the national or state constitutions—or by some special authority derived from the people—or by the people themselves. The two existing authorities under the national Constitution would be the legislative and judiciary. The latter he presumed was out of the question. The former was, in his judgment, liable to insuperable objec-

The Constitution provided that most public officials were to be elected by popular vote. But the President and Vice President were to be selected by an electoral college.

tions. Besides the general influence of that mode on the independence of the executive, in the first place, the election of the chief magistrate would agitate and divide the legislature so much that the public interest would materially suffer by it. Public bodies are always apt to be thrown into contentions, but into more violent ones by such occasions than by any others. In the second place, the candidate would intrigue with the legislature; would derive his appointment from the predominant faction, and be apt to render his administration subservient to its views. In the third place, the ministers of foreign powers would have and would make use of the opportunity to mix their intrigues and influence with the election. Limited as the powers of the executive are, it will be an object of great moment with the great rival powers of Europe who have American possessions, to have at the head of our government a man attached to their respective politics and interests. No pains, nor perhaps expense, will be spared, to gain from the legislature an appointment favorable to their wishes.... The existing authorities in the states are the legislative, executive, and judiciary. The appointment of the national executive by the first was objectionable in many points of view, some of which had been already mentioned. He would mention one which of itself would decide his opinion. The legislatures of the states had betrayed a strong propensity to a variety of pernicious measures. One object of the national legislature was to control this propensity. One object of the national executive, so far as it would have a negative on the laws, was to control the national legislature, so far as it might be infected with a similar propensity. Refer the appointment of the national executive to the state legislatures, and this controling purpose may be defeated. The legislatures can and will act with some kind of regular plan, and will promote the appointment of a man who will not oppose ... a favorite object. Should a majority of the legislatures, at the time of election, have the same object, or different objects of the same kind, the national executive would be rendered subservient to them. An appointment by the state executives was liable, among other objections, to this insuperable one, that being standing bodies, they could and would be courted, and intrigued with by the candidates, by their partisans, and by the ministers of foreign powers. The state judiciaries had not been, and he presumed would not be, proposed as a proper source of appointment. The option before us, then, lay between an appointment by electors chosen by the people and an immediate appointment by the people. He thought the former mode ... greatly preferable to an appointment by the national legislature. As the electors people and an immediate appointment by the people. He thought the former mode... greatly preferable to an appointment by the



When Americans vote for President, they are actually choosing their presidential electors. The electors then cast their votes for that candidate.

national legislature. As the electors would be chosen for the occasion, would meet at once, and proceed immediately to an appointment, there would be very little opportunity for cabal or corruption.... The remaining mode was an election by the people.... He would only take notice of two difficulties.... The first arose from the disposition in the people to prefer a citizen of their own state and the disadvantage this would throw on the smaller states.... The second difficulty arose from the disproportion of qualified voters in the northern and southern states, and the disadvantages which this mode would throw on the latter."[42]

Avoid Two Great Evils of Cabal and Foreign Influence

Butler: "The two great evils to be avoided are cabal at home and influence from abroad. It will be difficult to avoid either, if the election be made by the national legislature. On the other hand, the government should not be made so complex and unwieldy as to disgust the states. This would be the case if the election should be referred to the people. He liked best an election by electors chosen by the legislatures of the states."[43]

Purpose of Electoral College Is to Have Electors Who Can Know and Judge the Candidates

Wilson: "It gets rid of one great evil, that of cabal and corruption; and continental characters will multiply as we more and more coalesce, so as to enable the electors in every part of the Union to know and judge of them."[44]

PROVISION

139

From Article II.1.2

No person who is a Senator or Representative, or who occupies an office of trust or profit in the United States government, shall be eligible to serve as an elector.

This provision gave the people the RIGHT to have all of the electors chosen from among the general populace, rather than have a cabal or coalition of government officials seek these positions in order to favor one of their own.

It will be observed that the theme of the entire Constitution is to protect the people from the concentration of political power in the government. All human history, and the experience of the United States during the past two hundred years, has demonstrated that concentrated governmental power is the greatest threat to individual freedom and states rights. The Founders did everything possible to prevent the federal government from becoming involved in anything other than the "few things" assigned to it.

Protecting the electoral system from conquest and occupation by the agencies of the federal government was the purpose of this provision.

PROVISION

140

From Article II.1.4

The Congress shall designate the time when the electors shall meet and cast their votes for President and Vice President. This shall be the same day in all of the states.

This provision was to give the various candidates the RIGHT to have the electors meet on the same day, and at widely separate locations, so as to prevent corruption or collusion.

The electors meet at their respective state capitols, and the day they cast their ballots has been designated as the Monday following the second Wednesday of December.

The Founders had considerable to say about this entire arrangement.

Importance of Electors Casting Their Votes on the Same Day

Wilson: "By it we avoid corruption; and we are little exposed to the lesser evils of party intrigue.... The Constitution, with the same view, has directed, that the day on which the electors shall give their votes shall be the same throughout the United States.... With this regulation, it will not be easy to corrupt the electors, and there will be little time or opportunity for tumult or intrigue."[45]

Time for Selecting Electors Reserved to Congress

Spaight: "The time of choosing the electors was to be determined by Congress, for the sake of regularity and uniformity; that, if the states were to determine it, one might appoint it at one day, and another at another, etc.; and that the election being on the same day in all the states, would prevent a combination between the electors."[46]

No Opportunity for Electors to Confer Together

Iredell: "Nothing is more necessary than to prevent every danger of influence...by this provision, the electors must meet in the different states on the same day, and cannot confer together. They may not even know who are the electors in the other states. There can be, therefore, no kind of combination. It is probable that the man who is the object of the choice of thirteen different states, the electors in each voting unconnectedly with the rest, must be a person who possesses, in a high degree, the confidence and respect of his country."[47]

Electoral College to Avoid Corruption and Improper Influence

W. Davie: "The mode of his election precludes every possibility of corruption or improper influence of any kind."[48]

Why Corruption Would Be Less Likely

G. Morris: "As the electors would vote at the same time, throughout the United States, and at so great a distance from each other, the great evil of cabal was avoided. It would be impossible, also, to corrupt them."[49]

PROVISION 141
From Article II.1.5

To be a candidate for President of the United States, a person must be a natural-born citizen, or a citizen at the time of the adoption of the Constitution.

This provision gave the American people the RIGHT to have a President who would always be one of their own native-born fellow citizens.

A temporary exception was made for a number of the most valiant patriots. It will be appreciated that there were many persons of foreign birth who helped to create the United States, and these would have been rendered ineligible for the office of President had this provision not been inserted in the Constitution. Seven of the signers of the Constitution were foreign born: James Wilson, Robert Morris and Thomas Fitzsimons of Pennsylvania; Alexander Hamilton of New York; William Paterson of New Jersey; James McHenry of Maryland; and Pierce Butler of South Carolina.

PROVISION 142
From Article II.1.5

A candidate for President must be at least thirty-five years of age at the time he is sworn in as President.

This provision gave the American people the RIGHT to have as their Presidents only those who had reached a maturity of at least thirty-five years of age.

John Jay expressed the general feeling of the Convention:

"By excluding men under thirty-five...it confines the electors to men of whom the people have had time to form a judgment, and with respect to whom they will not be liable to be deceived by those brilliant appearances of genius and patriotism which, like transient meteors, sometimes mislead as well as dazzle."[50]

Theodore Roosevelt, the youngest man ever to serve in the presidential office.

PROVISION 143

From Article II.1.5

A candidate for President must have been a resident of the United States for at least fourteen years.

This provision gave the American people the RIGHT to have as their Presidents individuals who had been living among the people for at least fourteen years and were acquainted with the American concepts of government as well as the moral values which the people wanted the President to exemplify.

There was no member of the Constitutional Convention who was held in higher regard than Benjamin Franklin. Nevertheless, he had been out of the country for twenty-five of the past thirty years. The members of the Convention noted on a number of occasions that the 81-year-old patriot, who had served his country so well in foreign lands, had missed some of the latest developments in political philosophy which had emerged during the past several years of experimentation with freedom. John Adams was particularly anxious about some of Franklin's sentiments, and felt he might have lost some of the elderly gentleman's friendship trying to persuade him differently.[51]

Other examples of distinguished Americans who had lived abroad a number of years and who reflected some non-American influences led the Founders to include this provision in the Constitution.

PROVISION 144

From Article II.1.6

In case the office of President is vacated for any reason, the same shall "devolve upon the Vice President."

This provision gives the American people the RIGHT to have a chief executive in power at all times, even if the President's position is unexpectedly vacated.

Down through the years there have been a number of occasions when a President was disabled and therefore not functioning in his presidential capacity. This has raised a question as to when the Vice President should assume command.

For example, President Garfield was unable to perform the duties of his office for nearly three months after being shot on July 2, 1881, but Vice President Arthur did not assume the duties of the President.

An even more serious situation occurred during the administration of Woodrow Wilson. He became both mentally and physically ill for several months

so that not even cabinet officers or the representatives of foreign nations could see him. During this time Mrs. Wilson, for all practical purposes, served as acting President and made whatever decisions were necessary.

Dwight D. Eisenhower was incapacitated by serious illness on three separate occasions during his administration.

As we shall later see, the Twenty-fifth Amendment was passed to remedy situations similar to those which occurred during the Garfield and Wilson administrations. Unfortunately, the complexities of the Twenty-fifth Amendment created new problems and did not really solve the old ones.

A much more practical provision is the one adopted in the constitution of Brazil in 1890, which states clearly and simply that the Vice President shall take the place of the President "in case of temporary disability and succeed him in case of vacancy."

PROVISION

145

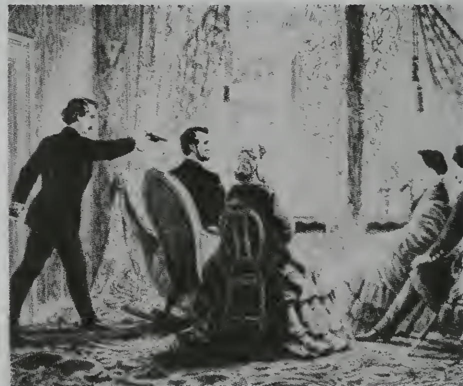
From Article II.1.6

The Congress may, by law, provide for the situation when the offices of both President and Vice President are vacated, and may indicate the persons to serve in these capacities until the disability is removed or a new election held.

Once again, this provision gave the American people the RIGHT to have a chief executive in power at all times, even though a series of disasters may have destroyed the established line of executive authority.

In an atomic age, and during a period of widespread assassinations and terrorism, it is highly essential that provision be made for any disaster which might deprive the nation of its top leadership just when it is needed the most.

As a result, it has been provided that in the event the President and Vice President are not available, the Speaker of the House shall become President. The next person in line is the president pro tempore of the Senate. Next come the cabinet officers according to the seniority of their departments.



The Constitution authorized Congress to establish a back-up system to be used should both the President and Vice President be removed from office. Shown here is the assassination of Abraham Lincoln.

PROVISION

146

From Article II.1.7

The President shall be compensated for his services and paid at stated times, but his compensation shall be neither increased nor diminished during the time he is in office.

This gave the President the RIGHT to know in advance what his compensation would be and the assurance that he could not be influenced or intimidated by either promises or threats from Congress concerning it.

In 1789 the first Congress fixed the salary of the President at $25,000 a year; however, President Washington declined to accept any salary.

In 1873 the Congress passed an act which doubled President Grant's salary the day before his second term began. In 1909 the salary of the President was advanced to $75,000 with an allowance for traveling expenses such as "Congress may deem necessary." In 1949 it was raised to $100,000 with an expense account of $50,000. In 1967 the presidential salary was raised to $200,000.

Alexander Hamilton stated that the reason the President is prohibited from receiving any additional emolument from the United States or any individual state is so that Congress "can neither weaken his fortitude by operating upon his necessities, nor corrupt his integrity by appealing to his avarice."[52]

Americans have always taken pride in the fact that although George Washington was hard-pressed financially when he took command of the Continental Army, and also when he was asked to serve as President, he declined to accept any compensation for his services.

However, an intellectual shock occurred in 1976 when Random House published a sensationalized book called *George Washington's Expense Account,* by Marvin Kitman. This author claimed that while Washington rejected a salary, he more than made up for it by padding his expense account. It turned out that the author had juggled figures and miscalculated numerous monetary rates so as to balloon Washington's request for $48,000 expenses into $449,261. In the end it was the author who had done the padding, not Washington. In fact, historians have commented frequently on the careful and accurate accounts that Washington kept of all his expenses so that he would be requesting no more than what was actually spent.[53]

Comments by the Founders on the President's compensation included the following:

Why Compensation of President Should Not Be Subject to Change by Congress

Hamilton: "It is evident that without proper attention to this article, the separation of the executive from the legislative department would be merely nominal and nugatory. The legislature, with a discretionary power over the salary and emoluments of the Chief Magistrate,

could render him as obsequious to their will as they might think proper to make him. They might, in most cases, either reduce him by famine, or tempt him by largesses, to surrender at discretion his judgment to their inclinations.... In the main it will be found that a power over a man's support is a power over his will.

"The legislature, on the appointment of a President, is once and for all to declare what shall be the compensation for his services during the time for which he shall have been elected. This done, they will have no power to alter it, either by increase or diminution, till a new period of service by a new election commences. They can neither weaken his fortitude by operating on his necessities, nor corrupt his integrity by appealing to his avarice. Neither the Union, nor any of its members, will be at liberty to give, nor will he be at liberty to receive, any other emolument than that which may have been determined by the first act."[54]

Salary Must Never Be Sufficient to Attract Men of Avarice

Franklin: "Sir, there are two passions which have a powerful influence on the affairs of men. These are ambition and avarice; the love of power and the love of money. Separately, each of these has great force in prompting men to action; but when united in view of the same object, they have in many minds the most violent effects. Place before the eyes of such men a post of *honor,* that shall be at the same time a place of *profit,* and they will move heaven and earth to obtain it. The vast number of such places it is that renders the British government so tempestuous. The struggles for them are the true sources of all those factions, which are perpetually dividing the nation, distracting its councils, hurrying sometimes into fruitless and mischievous wars, and often compelling a submission to dishonorable terms of peace.

"And of what kind are the men that will strive for this profitable pre-eminence, through all the bustle of cabal, the heat of contention, the infinite mutual abuse of parties, tearing to pieces the best of characters? It will not be the wise and moderate, the lovers of peace and good order, the men fittest for the trust. It will be the bold and the violent, the men of strong passions and indefatigable activity in their selfish pursuits. These will thrust themselves into your government, and be your rulers. And these, too, will be mistaken in the expected happiness of their situation: for their vanquished competitors, of the same spirit, and from the same motives, will perpetually be endeavoring to distress their administration, thwart their measures, and render them odious to the people.

"Besides these evils, sir, though we may set out in the beginning with moderate salaries, we shall find that such will not be of long continuance. Reasons will never be wanting for proposed augmentations. And there will always be a party for giving more to the rulers that the rulers may be able in return to give more to them. Hence, as all history informs us, there has been in every state and kingdom a constant kind of warfare between the governing and governed, the one striving to obtain more for its support and the other to pay less. And this has alone occasioned great convulsions, actual civil wars, ending either in dethroning of the princes or enslaving of the people. Generally, indeed, the ruling power carries its point, the revenues of princes constantly increasing; and we see that they are never satisfied, but always in want of more. The more the people are discontented with the oppression of taxes, the greater need the prince has of money to

distribute among his partisans, and pay the troops that are to suppress all resistance, and enable him to plunder at pleasure. There is scarce a king in an hundred who would not, if he could, follow the example of Pharaoh, get first all the people's money, then all their lands, and then make them and their children servants forever. It will be said that we don't propose to establish kings. I know it; but there is a natural inclination in mankind to kingly government. It sometimes relieves them from aristocratic domination. They had rather have one tyrant than five hundred. It gives more of the appearance of equality among citizens, and that they like. I am apprehensive, therefore, perhaps too apprehensive, that the government of these states may in future times end in a monarchy. But this catastrophe I think may be delayed if in our proposed system we do not sow the seeds of contention, faction, and tumult, by making our posts of honor places of profit. If we do, I fear that, though we do employ at first a number, and not a single person, the number will in time be set aside; it will only nourish the foetus of a king ... and a king will the sooner be set over us.

"It may be imagined by some that this is a Utopian idea, and that we can never find men to serve us in the executive department without paying them well for their services. I conceive this to be a mistake.... The pleasure of doing good and serving their country, and the respect such conduct entitles them to, are sufficient motives with some minds to give up a great portion of their time to the public, without the mean inducement of pecuniary satisfaction....

"And, indeed, in all cases of public service, the less the profit the greater the honor.

"To bring the matter nearer home, have we not seen the great and most important of our offices, that of general of our armies, executed for eight years together without the smallest salary, by a patriot whom I will not now offend by any other praise; and this, through fatigues and distresses, in common with the other brave men, his military friends and companions, and the constant anxieties peculiar to his station? And shall we doubt finding three or four men in all the

Herbert Hoover returned his salary to the government, a commendable example of selflessness in public service. He is shown here with his wife, Lou.

United States, with public spirit enough to bear sitting in peaceful council for perhaps an equal term, merely to preside over our civil concerns and see that our laws are duly executed? Sir, I have a better opinion of our country. I think we shall never be without a sufficient number of wise and good men to undertake and execute well and faithfully the office in question."[55]

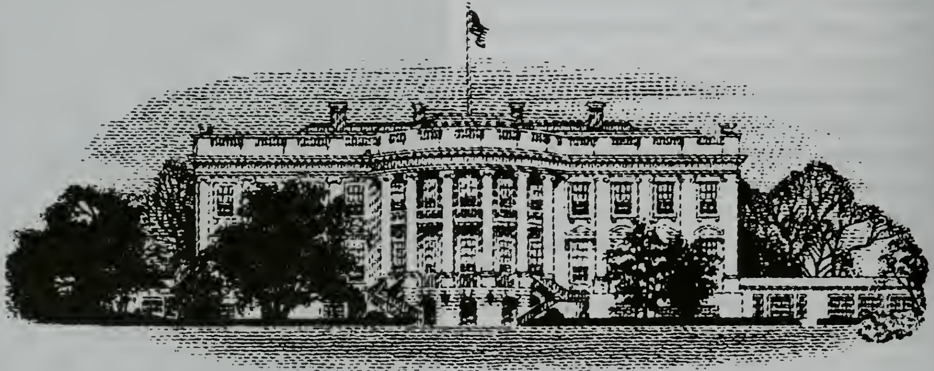
PROVISION

147

From Article II.1.7

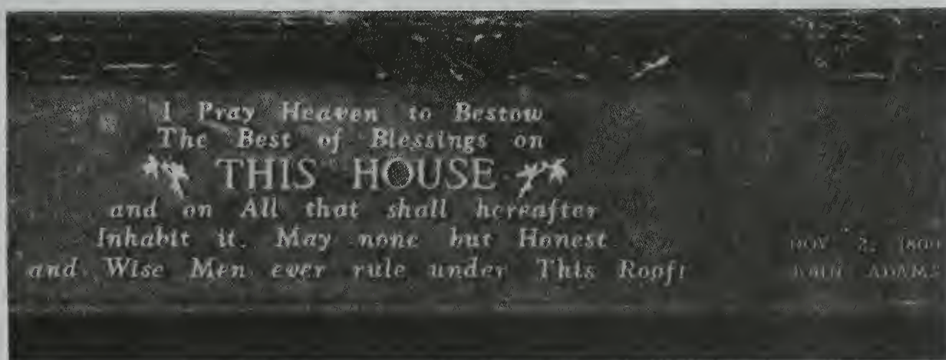
While serving as President of the United States, he shall not receive any additional emolument from the United States government or from any individual state government.

This provision gave the American people the RIGHT not to have their President become beholden to any other branch or agency of government through additional compensation. It was specifically designed to preserve the separation of powers so that the President could not be eligible for any position or compensation from other branches of government, either on the federal or the state level.



The Constitution is very specific about the basic qualifications of the President of the United States.

1. *Federalist Papers,* No. 45.
2. Ibid.
3. Ibid., No. 70; emphasis added.
4. Elliot, 4:104.
5. Ibid., 2:480.
6. Ibid., p. 511.
7. Madison, p. 38.
8. Ibid., p. 282.
9. Ibid., p. 49.
10. Ibid., p. 50.
11. Ibid.
12. Elliot, 4:103–4.
13. Ibid., 2:485–86.
14. Ibid., 4:315.
15. *Federalist Papers,* No. 71.
16. Ibid., No. 72.
17. Madison, p. 40.
18. Ibid., p. 270.
19. Ibid., p. 271.
20. Ibid., p. 283.
21. Ibid., p. 285.
22. Ibid., p. 313.
23. Ibid., p. 321.
24. *Federalist Papers,* No. 68.
25. Madison, p. 519.
26. Ibid., p. 322.
27. Elliot, 4:207.
28. Ibid., p. 105.
29. Ibid.
30. Ibid.
31. Ibid.
32. Madison, p. 509.
33. Ibid., pp. 285–86.
34. Ibid., p. 315.
35. Ibid., p. 463.
36. Elliot, 2:511.
37. *Federalist Papers,* No. 68.
38. Ibid., No. 64.
39. Madison, p. 286.
40. Ibid., p. 323.
41. Ibid., p. 324.
42. Ibid., pp. 318–20.
43. Ibid., p. 321.
44. Ibid., p. 510.
45. Elliot, 2:512.
46. Ibid., 4:104–5.
47. Ibid., p. 105.
48. Ibid., p. 104.
49. Madison, p. 509.
50. *Federalist Papers,* No. 64.
51. Koch, *The American Enlightenment,* p. 164.
52. See *Federalist Papers,* No. 73.
53. For a complete discussion see Jay A. Parry, "Did Washington Cheat on His Expense Account?" *Freemen Digest,* February 1984, pp. 34–37.
54. *Federalist Papers,* No. 73.
55. Madison, pp. 43–46.



The prayer of John Adams for the future inhabitants of the White House, written to his wife in 1800.

CHAPTER

THE POWERS AND RESPONSIBILITIES OF THE PRESIDENT

Having covered the qualifications, compensation, and possible replacement of the President (in case of death, resignation, or impeachment), we now turn to the oath of office and the powers assigned to the President.

This was the most delicate part of the article dealing with the office of the chief executive. Under the Articles of Confederation there had been no executive office, and the Revolutionary War had taught the Founders that a Congress without an executive was a mistake. Nevertheless, they were cautious about how much power the chief executive should have. As we pointed out in the last chapter, these powers were originally limited to six areas of authority, and the Founders intended that there should be no others unless each additional power was scrutinized carefully under the amend-

ment process. Unfortunately, practically all of the expanded powers of the President during the past 200 years have been acquired without amendments.

PROVISION 148

From Article II.1.8

Before he can assume the duties of his office, the President must take the following oath: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

This provision was to give the American people the RIGHT to have the President commit himself by a most sacred vow that he would uphold the American charter of freedom, the Constitution of the United States.

George Washington was the first President to take this oath. The oath was administered by the chancellor, the highest judicial officer available. Thereafter it was the Chief Justice of the Supreme Court who administered the oath. The first inaugural ceremony occurred on the balcony of the Federal Hall in New York City, on April 30, 1789, since this was the earliest the government could be organized. Normally, the inauguration was intended to occur on March 4, as required by the Constitution, but the Twentieth Amendment (adopted in 1933) changed the inaugural date to January 20.

It is interesting that when George Washington placed his hand on the Bible and took the oath of office, he added the words, "So help me God!" Each President followed this example afterward, and in 1862, by an act of Congress, it was incorporated into the oath as an official part of the ceremony.

Thomas Jefferson was the first President to be inaugurated in Washington, D.C. This occurred on March 4, 1801. The circumstances were not auspicious. John Adams, the previous President, had already packed up and gone home. There was no parade, no festivities. Jefferson was staying at Conrad's Boardinghouse, and on the morning of his inauguration he took breakfast with the rest of the boarders and sat at the "bottom of the table," meaning the least desirable chair since it was farthest from the fire. After breakfast he walked to the Capitol building, where the ceremonies took place in the Senate chamber of the partially completed north wing. Approximately one thousand people crowded into the room.[1]

Today the formal taking of the oath usually occurs on a stand built over the east steps of the Capitol. Tens of thousands attend and the inauguration is presented as a worldwide television spectacular.

However, the oath may be taken at any place and before any officer empowered by law to administer oaths. President Grant's second term expired on Sunday, March 4, 1877, and Rutherford B. Hayes took the oath at the White House on Saturday and again at the Capitol on Monday. Upon the death of President Garfield

(September 19, 1881) the oath was taken by Vice President Chester Arthur in New York City; later he took it again in Washington. When President Roosevelt died unexpectedly, Harry Truman was sworn in at the White House, and when President Kennedy was assassinated, Lyndon B. Johnson was sworn in aboard the presidential aircraft by a local federal judge.

The oath was designed as a formal commitment on the part of a new president to perform the duties which the Constitution and the legal agencies of government assigned to him. It also commits him to defend the Constitution of the United States, meaning the principles enunciated in this national charter.

Because of this presidential oath or commitment to perform all duties assigned to him, there have been a number of occasions when the Congress has undertaken to impose upon the President the administration of certain laws whether the President liked it or not. This usually occurs when the majority of the Congress belongs to one party and the President belongs to another. During the Eisenhower administration, the promotion of the Agricultural Act was imposed on the executive branch. The Secretary of Agriculture, Ezra Taft Benson, had been a farmer and spent much of his time persuading the farmers not to sign up under the federal crop subsidy provisions, but to keep themselves free and independent. This was legitimate since participation was voluntary.

A different situation arose during the Nixon administration when a number of appropriations by the Congress were impounded by the President, who refused to spend the money or implement the programs which Congress had imposed upon him. The Supreme Court held, however, that the President was in error. He must carry out the will of Congress as expressed in the laws which it has passed.

PROVISION 149

From Article II.2.1

The President shall be commander in chief of the army and navy of the United States and of the militia of the several states when they are called into active service by the federal government.

This provision gives the President the RIGHT to control all available military forces in time of war or peace.

The constitutional authority of the President to serve as commander in chief of the army and navy cannot be diminished by the Congress. In the Constitutional Convention it was proposed that a restriction be placed upon the President so that he could not lead an armed force in the field; however, this was rejected. In practice no President has led an army or commanded a navy as such, but the Secretary of Defense carries out the wishes of the commander in chief.

At one time some of the states thought they should determine whether or not the militia should be made available to the

service of the nation, but the Supreme Court held that once the Congress has approved it, "the authority to decide whether the exigency has arisen belongs exclusively to the President and his decision is conclusive upon all other persons." If this were not the case the hesitancy upon the part of certain states to make their militia available might result in the neglect of national needs and expose the nation to great danger in case of imminent attack.

In war time much of the "war power" of the Congress is delegated temporarily to the President as an emergency measure. During the Civil War, Congress aided the President to the point where it was sometimes described as "a giant committee of ways and means." It authorized President Lincoln to take possession of railroads when necessary for the public safety. A similar policy during World War I resulted in the Congress delegating to President Wilson the power to operate the railroads as an instrumentality of war. It also passed many acts of extraordinary power such as the Conservation of Food Act, the War Finance Corporation Act, the Trading with the Enemy Act, and many others. These automatically terminate with the conclusion of the war or by a time limit stated in the act itself. In any event, these powers can be repealed by Congress. Historically, some of the most serious erosions of the Constitution have resulted from the "emergency powers" delegated to the executive branch during the time of war or some national crisis, such as the Great Depression. Today, the federal government is engaged in a vast array of activities which are not covered in the Constitution but were initiated during a war or other emergency.

Views expressed by the Founders include the following:

Power of the President over the Military

Iredell: "The command of armies ought to be delegated to one person only. The secrecy, dispatch, and decision, which are necessary in military operations, can only be expected from one person. The President, therefore, is to command the military forces of the United States.... The President has not the power of declaring war by his own authority, nor that of raising fleets and armies.... The power of declaring war is expressly given to Congress, that is, to the two branches of the legislature.

"With regard to the militia...he has the command of them when called into the actual service of the United States, yet he has not the power of calling them out. The power of calling them out is vested in Congress."[2]

Only Rarely Will He Also Be in Command of the State Militias

Hamilton: "The President will have only the occasional command of such part of the militia of the nation as by legislative provision may be called into the actual service of the Union.... The President is to be commander in chief of the army and navy of the United States.... It would amount to nothing more than the supreme command and direction of the military and naval forces, as first general and admiral of the Confederacy."[3]

War Powers Require a Single Hand

Hamilton: "Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a sin-

gle hand. The direction of war implies the direction of the common strength; and the power of directing and employing the common strength forms a usual and essential part in the definition of the executive authority."[4]

PROVISION

150

From Article II.2.1

The President may require the opinion, in writing, of the principal officers who superintend the various bureaus and agencies, or other services of the executive department. Such officers shall be required to report to the President any pertinent information he may desire concerning those duties and responsibilities assigned to any office.

This gives the President the RIGHT to know every detail concerning the operation of the executive branch and all the agencies for which he is responsible.

This provision is the basis for the President's "cabinet" system. The term *principal officers* has been interpreted to mean the heads of major departments. When these are called into meetings once or twice a week, they constitute what has come to be known as the "Cabinet." They meet in a room of the White House called the "Cabinet room," which is adjacent to the Oval Office.

Members of the Cabinet have two responsibilities:

1. Individually, to administer the affairs of major departments.

2. Collectively, to serve as an advisory council to the President.

The President is not compelled to take the advice of his Cabinet. On one occasion when President Lincoln had a particularly difficult decision to make, he studied it out, made up his mind, and presented it to the Cabinet. They all vigorously combined to oppose the President. They gave their reasons why he must not take the proposed course, but Lincoln was not impressed with their arguments. When they were through, he took a vote, and then said: "Seven nays; one aye. The ayes have it." Of course his was the only "aye."

Iredell described the attitude of the Founders concerning the relationship between the Cabinet and the President:

"He is only to consult them if he thinks proper. Their opinion is to be given him in writing. By this means he will be aided by their intelligence; and the necessity of their opinions being in writing, will render them more cautious in giving them, and make them responsible should they give advice manifestly improper.... The President will personally have the credit of good, or the censure of bad measures; since, though he may ask advice, he is to use his own judgment in following or rejecting it."[5]

Cabinet posts are nearly always filled from the President's own party. In fact, they are often given as rewards to those who have worked vigorously for the President's election or made substantial contributions to his campaign. Nevertheless, the President is influenced in his choice by two other factors:

1. Geographical representation across the nation.
2. A professional background appropriate to the department which the Cabinet officer will be administering. This means an agricultural background for the Department of Agriculture, a military background for the Department of Defense, a financial background for the Secretary of the Treasury.

A President will nearly always have a choice group of trusted friends with whom he will consult in addition to the Cabinet. President Andrew Jackson often gathered his most trusted political friends in the kitchen of the White House to discuss national affairs. Word leaked out that this group had a powerful influence on the judgment of the President and it therefore became known as the "Kitchen Cabinet." Franklin Roosevelt leaned heavily on a group of intellectuals and professional social planners who became known as the President's "brain trust."

All thirteen Cabinet posts are filled by individuals who are called "Secretary," except in the Department of Justice, where the Cabinet officer is called the "Attorney General." The order in which the various departments were created is as follows:

1. Department of State: 1789.
2. Department of the Treasury: 1789.
3. Department of War: 1789. In 1947 the Congress formed the National Military Establishment, headed by the Secretary of Defense. The NME combined the Department of War with the Department of the Navy (created in 1798) and the Department of the Air Force (created in 1947). In 1949 the NME was renamed the Department of Defense.

The Department of War was established in 1789.

4. Department of Justice: 1789, 1870. The office of Attorney General was created in 1789 under President Washington, but the Department of Justice was not set up until 1870.
5. Department of the Interior: 1849.
6. Department of Agriculture: 1889.
7. Department of Commerce: 1903, 1913. Originally this department was called the Department of Commerce and Labor. In 1913 the two were divided.
8. Department of Labor: 1913.
9. Department of Health and Human Services: 1953, 1979. Originally Congress created the Department of Health, Education, and Welfare (HEW) in 1953. However, in 1979 Congress created a separate Department of Education and named the old HEW the Department of Health and Human Services.
10. Department of Housing and Urban Development: 1965.
11. Department of Transportation: 1967.
12. Department of Energy: 1977.
13. Department of Education: 1979.

It should be mentioned that the Post Office Department was created in 1789, but was changed into an executive department in 1872 and was abolished in 1971. The Postmaster General was a member of the Cabinet from 1829 until 1971. In 1971 Congress replaced the Post Office Department with the United States Postal Service, an independent agency of the federal government.

The White House Administrative Agencies

The White House was originally designed as a residence for the President, but it has become the central complex for what many describe as the highest concentration of political power in the history of the world. The operations at the White House might be described in terms of the following agencies and departments:

1. The White House Office. This consists of the President's most intimate personal and political staff. His chief of staff and a few immediate advisors meet with him daily to plan day-to-day operations. These are also the advisors who handle "hot issues" which arise from time to time. The President's press secretary works out of this office and handles relations with the news media.
2. The National Security Council. This is one of the key policymaking bodies, handling all matters—foreign and domestic—which relate to national security. The Central Intelligence Agency functions under the direction of the NSC. The Secretaries of Defense and State belong to the NSC, as does the Vice President. The President is chairman.
3. The Office of Policy Development. This group of advisors handles various kinds of domestic problems. It is headed by the assistant to the President in charge of policy development.
4. The Office of Management and Budget. This is the largest organization within the executive office. This office aids the President in developing the nation's overall fiscal policy and preparing the annual budget.
5. The Council on Environmental Quality. This is headed by a board of three people appointed by the President and approved by the Senate. This council works closely with the Environmental Protection Agency (EPA) and several other related agencies.
6. The Office of the United States Trade Representative. This office assists the President on matters involving foreign trade. The President appoints a United States trade representative (with Senate approval) and two deputies to represent the United States in trade negotiations with foreign nations.
7. The Intelligence Oversight Board. This board monitors the work of the Central Intelligence Agency (CIA) and other intelligence agencies to see that they do not overstep their legal authority.
8. The Office of Administration. This is a service pool for all of the other departments at the White House. It furnishes clerical help, research assistance, and other services.

The White House in the nineteenth century.

PROVISION

151

From Article II.2.1

The people of the states empower the President to grant reprieves and pardons for offenses against the United States.

This provision gives the President the RIGHT to:

1. Grant reprieves — which means to delay the execution of a sentence.
2. Grant pardons — which means to grant the suspension of or the mitigation of a sentence.

A reprieve is granted when there is some special circumstance, such as the discovery of new testimony or new physical evidence, and the President feels that this might have changed the outcome of the case had it been known at the time of the trial. He therefore grants a reprieve until the new information can be examined and evaluated by the court.

A pardon, on the other hand, is the actual suspension or mitigation of the sentence imposed by the court. A complete pardon by the President does not declare that the offender is innocent, but merely that there are circumstances which compel the President to feel that the execution of the sentence would be "unjust."

The pardoning power is called "the conscience of the nation." It is exercised when true justice and a sense of fairness call for the intervention of the President to prevent or lessen the execution of a sentence.

Only the President can exercise this power in federal cases. Only the governor can exercise this power in state cases.

To be effective, the pardon must be accepted by the person involved. There have been occasions when the convicted person would not accept a pardon.

A pardon can be conditional — requiring the convicted person to fulfill certain conditions before the pardon takes full effect.

The pardon can also be a commuting or reduction of the penalty, such as changing a death sentence to life imprisonment, or reducing the length of a sentence or the amount of the fine.

The pardoning power can also apply to a group of offenders, taking the form of an amnesty. For example, the President could grant an amnesty to a group of illegal aliens who had lived in the United States for many years and had become responsible, hard-working residents. A very controversial grant of amnesty by President Gerald R. Ford was given to draft resisters who fled to Canada to escape military service in the Vietnam War.

Ordinarily a pardon is granted after conviction, but this is not necessarily so. The most famous case is that of Richard Nixon, who was granted a pardon by President Gerald R. Ford in 1974. He was pardoned for "all offenses, both known and unknown," in connection with the Watergate scandal.

The Founders provided answers to a number of questions which arose during the debates on this presidential power. For example:

- *What is the reasoning behind the pardoning power?*

Circumstance May Entitle an Offender to Mercy

Iredell: "Another power that he has is to grant pardons, except in the cases of impeachment.... It is the genius of a republican government that the laws should be rigidly executed, without the influence of favor or ill-will—that, when a man commits a crime, however powerful he or his friends may be, yet he should be punished for it; and,... because, in such a government, the law is superior to every man, and no man is superior to another. But... there ought to be exceptions to it; because... though a man offends against the letter of the law, yet peculiar circumstances in his case may entitle him to mercy. It is impossible for any general law to foresee and provide for all possible cases that may arise; and therefore an inflexible adherence to it, in every instance might frequently be the cause of very great injustice.... This power, however, only refers to offenses against the United States, and not against particular states. Another reason for the President possessing this authority, is this: it is often necessary to convict a man by means of his accomplices.... A criminal would often go unpunished, were not this method to be pursued against him ... till an accomplice's own danger is removed, his evidence ought to be regarded with great diffidence....

"It may happen that many men, upon plausible pretences, may be seduced into very dangerous measures against their country. They may aim, by an insurrection, to redress imaginary grievances, at the same time believing, upon false suggestions, that their exertions are necessary to save their country from destruction. Upon cool reflection, however, they possibly are convinced of their error, and clearly see through the treachery and villainy of their leaders. In this situation, if the President possessed the power of pardoning, they probably would throw themselves on the equity of the government, and the whole body be peaceably broken up. Thus, at a critical moment, the President might, perhaps, prevent a civil war. But if there was no authority to pardon, in that delicate exigency, what would be the consequence? The principle of self-preservation would prevent their parting. Would it not be natural for them to say, 'We shall be punished if we disband. ...We will as well die in the field as at the gallows.'"[6]

• *Can the President pardon treason and impeachment?*

President Can Pardon Treason but Not Impeachment

Hamilton: "A President of the Union... though he may even pardon treason, when prosecuted in the ordinary course of law, could shelter no offender, in any degree, from the effects of impeachment and conviction."[7]

• *Is it legitimate to use the pardoning power to get one offender to testify against his codefendants?*

Pardoning Power May Be Useful in Criminal Cases

Wilson: "Pardon before conviction might be necessary, in order to obtain the testimony of accomplices. He stated the case of forgeries, in which this might particularly happen."[8]

• *Can the President apply the pardoning power to a whole group and grant them amnesty?*

Amnesty Power in the President May Be Useful in Restoring Order

Hamilton: "The principal argument for reposing the power of pardoning in this case in the Chief Magistrate is this: in seasons of insurrection or rebellion, there are often critical moments when a well-timed offer of pardon to the insurgents or rebels may restore the tranquility of the commonwealth; and which, if suffered to pass unimproved, it may never be possible afterwards to recall. The dilatory process of convening the legislature, or one of its branches, for the purpose of obtaining its sanction to the measure, would frequently be the occasion of letting slip the golden opportunity. The loss of a week, a day, an hour, may sometimes be fatal."[9]

• *Can the President grant a pardon prior to conviction?*

The President Can Pardon Before Conviction but May Be Impeached If He Is Unjust

Nicholas: "The President himself is personally amenable for his mal-administration; the power of impeachment must be a sufficient check on the President's power of pardoning before conviction."[10]

• *What is the remedy if the President exercises the pardoning power unjustly or arbitrarily?*

Protection Against President's Improper Use of Pardoning Power

Wilson: "Pardon is necessary for cases of treason, and is best placed in the hands of the executive. If he be himself a party to the guilt, he can be impeached and prosecuted."[11]

PROVISION

152

From Article II.2.1

The President shall not have power to grant reprieve or pardon in the case of impeachment proceedings brought against a judge or officer of the executive branch.

This provision gives the Congress the RIGHT to permanently remove any person from office in the judiciary or the executive branch of the government if he or she has been charged by the House and found guilty in the Senate of "treason, bribery, or other high crimes and misdemeanors." Once that person is impeached and convicted, the President has no power to pardon the offense and restore the offender to his or her previous position.

The historical background for this provision is interesting. When Parliament was first regaining some of its prerogatives during the Middle Ages, it secured from the king the guarantee that no laws would be invoked without the consent of Parliament. However, the king circum-

vented this procedure by appointing officers and administrators who would not enforce the laws which the Parliament passed but which the king privately disapproved. The next step was to squeeze from the king the power to allow Parliament to impeach his officers when they failed to perform their duty.

The king then frustrated the Parliament by pardoning those who were impeached and giving them back their jobs.

The final step was taken when Parliament deprived the king of the power to pardon a person who had been removed from office by impeachment proceedings.

The Founders had all of this background in mind when they incorporated this provision into the Constitution. It meant that any judge or federal officer who had been removed from office for "treason, bribery, or other high crimes and misdemeanors" could not be pardoned and thereafter demand that he be restored to his former position.

Here are two questions which had to be answered during the debates:

- *Why was impeachment made an exception under the power to pardon?*

Nonpardonable Impeachment Necessary for Separation of Powers

Iredell: "The power of impeachment is given by this Constitution, to bring great offenders to punishment. It is calculated to bring them to punishment for crime which it is not easy to describe, but which every one must be convinced is a high crime and misdemeanor against the government. This power is lodged in those who represent the great body of the people, because the occasion for its exercise will arise from acts of great injury to the community, and the objects of it may be such as cannot be easily reached by an ordinary tribunal. The trial belongs to the Senate, lest an inferior tribunal should be too much awed by so powerful an accuser.... If the President had the power of pardoning in such a case, this great check upon high officers of state would lose much of its influence. It seems, therefore, proper that the general power of pardoning should be abridged in this particular instance. The punishment annexed to this conviction on impeachment can only be removal from office, and disqualification to hold any place of honor, trust, or profit. But the person convicted is further liable to a trial at common law, and may receive such common-law punishment as belongs to a description of such offenses, if it be punishable by that law."[12]

- *Is the President himself subject to a nonpardonable impeachment?*

No Official Is Exempt from a Nonpardonable Impeachment

C. C. Pinckney: "No man, however great, is exempt from impeachment and trial. If the representatives of the people think he ought to be impeached and tried, the President cannot pardon him; and this great man himself...as well as the Vice-President, and all civil officers of the United States, are to be removed from office on impeachment and conviction of treason, bribery, or other high crimes and misdemeanors."[13]

The impeachment trial of President Johnson, 1868.

PROVISION

153

From Article II.2.2

The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided that two-thirds of the Senators who are present concur with the provisions thereof.

This provision gives the people the RIGHT not to be subject to any agreement with a foreign nation which has not received the consent of two-thirds of the Senators who were present when the matter was presented to them.

A treaty is a written contract between two or more governments respecting matters of mutual welfare, such as peace, the acquisition of territory, the defining of boundaries, the needs of trade, the rights of citizenship, the ownership or inheritance of property, the benefits of copyrights and patents, or any other similar subject.

During the time of the Continental Congress (1774–1781) the only body authorized to make treaties on behalf of the states was the Congress itself. The same principle applied under the Articles of Confederation (1781–1789). However, it was appreciated that under the complexity of the foreign relations arising in the future it would be necessary to allow the executive officers of the government to negotiate various treaties and then present them to some branch of the Congress for approval. Recognizing this necessity, the Constitution provided that this task should fall upon the President and his officers—but before any treaty could go into effect it had to be presented to the Senate and have the approval of at least two-thirds of its members. A quorum must be present when the vote is taken.

Once a treaty is made, it becomes the established law. Thereafter, it requires both branches of Congress to abrogate it. In 1789 the first Congress passed an act to declare the treaties "heretofore concluded with France" no longer obligatory on the United States, because they "have been repeatedly violated on the part of the French Government." This law superseded the previous treaties which had been made with France. However, a treaty entered into by the President and approved by the Senate may supersede an existing law passed by Congress. The latest expression of the national will is considered controlling.

There are some treaties which require the concurrence of the House of Representatives. This would include any treaties which involve the expenditure of funds. Until the House has approved a bill authorizing such expenditures the treaty cannot be implemented.

When a treaty is presented to the Senate it may (1) approve, (2) reject, (3) approve with amendments, (4) approve on condition that specified changes will be made, and (5) approve with reservations or interpretations.

The League of Nations Treaty

The most notable dispute over the ratification of a treaty occurred at the close of World War I, when a treaty negotiated by President Wilson on June 28, 1919, in Paris set up a League of Nations organiza-

tion. This provided that international disputes would be presented before a League of Nations tribunal, and sanctions (penalties) imposed according to the determination of the league. The Senate saw the League of Nations and the American obligations associated with it as a serious threat to the Constitution. The Senate rejected the League of Nations on the following grounds:

1. This treaty would require the United States to go to war without a declaration by Congress (which is precisely what happened under the United Nations Treaty in the case of both Korea and Vietnam).
2. It would commit the nation to the expenditure of funds which Congress might not wish to appropriate.
3. It would turn over to the balloting of nations the disposition of many of our most important constitutional affairs.

The United Nations Treaty

Following World War II, there was such an intense anxiety to quickly organize a "world order for peace" that the U.N. charter was adopted by the Senate without extensive study or analysis. The Senate hearing consisted of little more than a few questions addressed to the U.N. Secretary General, Alger Hiss, who had previously served as a top official in the U.S. State Department and was highly regarded.

It was only after several years of disappointment and frustration that many statesmen and scholars began to realize that the U.N. charter would have been much more responsive to the preservation of world peace if it had been more thoroughly analyzed and fine-tuned. This is what the American Founders had done at the Constitutional Convention during four months of intensive discussion and debate.

The Panama Canal Treaty

Another highly controversial treaty, allegedly involving a number of violations of the Constitution, was the Panama Canal Treaty. Major issues never adequately addressed by the administration in power included the following:

1. How can the President and the Senate use a treaty to give away a $20 billion property of the United States without the concurrence of the House, as required by Article IV, section 3, clause 2?
2. How can the President and the Senate use a treaty to commit the American people to pay millions of dollars to the government of Panama without first clearing the agreement with the House of Representatives, as required by Article I, section 7, clause 1?

Although more than half the members of the House of Representatives signed and delivered to the Senate a special petition requesting the opportunity to review and debate the Panama Canal Treaty, it was ignored. Had the request been granted, the treaty would probably have been rejected.

Violations of constitutional procedures have always resulted in costly mistakes. In this instance, the Panama Canal Zone passed out of the jurisdiction and control of the United States on October 1, 1979. The unfolding of future events will no doubt disclose how much wiser it would have been to have allowed this treaty to go through the traditional refining process, rather than be bulldozed through the Senate and ignore the right of the House to participate. It was like charging into a dark tunnel with no light visible at the end.

The Founders had to consider many critical aspects of the treaty-making

power. Some of the questions to which they responded during the debates included the following:

• *Why was the approval of treaties restricted to the Senate?*

The Senate Is the Appropriate Body to Ratify Treaties

C.C. Pinckney: "The Senate, from the smallness of its numbers, from the equality of power which each state has in it, from the length of time for which its members are elected, from the long sessions they may have without any great inconveniency to themselves or constituents, joined with the president, who is the federal head of the United States, form together a body in whom can be best and most safely vested the diplomatic power of the Union."[14]

• *Would it not have been better to include the House of Representatives in treaty ratification?*

Better Not to Extend Ratification to the Entire Legislature

Wilson: "Some gentlemen are of opinion that the power of making treaties should have been placed in the legislature at large; there are, however, reasons that operate with great force on the other side. Treaties are frequently (especially in time of war) of such a nature, that it would be extremely improper to publish them, or even commit the secret of their negotiation to any great number of persons. For my part, I am not an advocate for secrecy in transactions relating to the public; not generally even in forming treaties, because I think that the history of the diplomatic corps will evince, even in that great department of politics, the truth of an old adage, that "honesty is the best policy," and this is the conduct of the most able negotiators; yet sometimes secrecy may be necessary, and therefore it becomes an argument against committing the knowledge of these transactions to too many persons. But in their nature treaties originate differently from laws. They are made by equal parties, and each side has half of the bargain to make; they will be made between us and powers at the distance of three thousand miles. A long series of negotiation will frequently precede them; and can it be the opinion of these gentlemen that the legislature should be in session during this whole time? It well deserves to be remarked, that, though the House of Representatives possess no active part in making treaties, yet their legislative authority will be found to have strong restraining influences upon both President and Senate."[15]

• *Will there be exceptions, such as commercial treaties?*

Commercial Treaties Will Require the Consent of the House of Representatives

Corbin: "Treaties are generally of a commercial nature, being a regulation of commercial intercourse between different nations. In all commercial treaties, it will be necessary to obtain the consent of the representatives."[16]

• *Would there also be an exception where a treaty involves a change in the law?*

Commercial Treaties Involving Changes in Law Will Require Approval of Both Houses

Corbin: "The difference between a commercial treaty and other treaties. A commercial treaty must be submitted to the

consideration of Parliament, because such treaties will render it necessary to alter some laws, add new clauses to some, and repeal others. If this be not done, the treaty is void.

"The Mississippi [River] cannot be dismembered but in two ways—by a common treaty, or a commercial treaty. If the interest of Congress will lead them to yield it by the first, the law of nations would justify the people of Kentucky to resist, and the cession would be nugatory. It cannot, then, be surrendered by a common treaty. Can it be done by a commercial treaty? If it should, the consent of the House of Representatives would be requisite, because of the correspondent alterations that must be made in the laws."[17]

• *Is national security a factor in restricting approval to the Senate?*

Security Is a Major Factor

Jay: "The power of making treaties is an important one, especially as it relates to war, peace, and commerce; and it should not be delegated but in such a mode, and with such precautions, as will afford the highest security that it will be exercised by men the best qualified for the purpose, and in the manner most conducive to the public good. The Convention appears to have been attentive to both these points; they have directed the President to be chosen by select bodies of electors to be deputed by the people for that express purpose; and they have committed the appointment of senators to the State legislatures.

"The President and senators so chosen will always be of the number of those who best understand our national interests, whether considered in relation to the several States or to foreign nations, who are best able to promote those interests, and whose reputation for integrity inspires and merits confidence. With such men the power of making treaties may be safely lodged.

"A popular assembly composed of members constantly coming and going in quick succession...must necessarily be inadequate to the attainment of those great objects.... It was wise, therefore, in the convention, to provide...that they should continue in place a sufficient time to become perfectly acquainted without national concerns.... The duration prescribed is such as will give them an opportunity of greatly extending their political information, and of rendering their accumulating experience more and more beneficial to their country. Nor has the convention discovered less prudence in providing for the frequent elections of senators in such a way as to obviate the inconvenience of periodically transferring those great affairs entirely to new men; for by leaving a considerable residue of the old ones in place, uniformity and order, as well as a constant succession of official information, will be preserved....

"*Secrecy* and immediate *dispatch* are sometimes requisite. There are cases where the most useful intelligence may be obtained, if the persons possessing it can be relieved from apprehensions of discovery. There are many who would rely on the secrecy of the President, but who would not confide in that of the Senate, and still less in that of a large popular assembly. The convention have done well, therefore, in so disposing of the power of making treaties that although the President must, in forming them, act by the advice and consent of the Senate, yet he will be able to manage the business of intelligence in such a manner as prudence may suggest.

"Thus we see that the Constitution provides that our negotiations for treaties

shall have every advantage which can be derived from talents, information, integrity, and deliberate investigations, on the one hand, and from secrecy and dispatch on the other.

"It will not be in the power of the President and Senate to make any treaties by which they and their families and estates will not be equally bound and affected with the rest of the community; and, having no private interests distinct from that of the nation, they will be under no temptations to neglect the latter.

"As to corruption ... if it should ever happen, the treaty so obtained from us would, like all other fraudulent contracts, be null and void by the laws of nations.

"With respect to their responsibility, it is difficult to conceive how it could be increased. Every consideration that can influence the human mind, such as honor, oaths, reputations, conscience, the love of country, and family affections and attachments, afford security for their fidelity. In short, as the Constitution has taken the utmost care that they shall be men of talents, and integrity, we have reason to be persuaded that the treaties they make will be as advantageous as, all circumstances considered, could be made; and so far as the fear of punishment and disgrace can operate, that motive to good behavior is amply afforded by the article on the subject of impeachments."[18]

• *Does the requirement of approval by the Senate violate the "separation of powers" doctrine?*

Treaties Require Both Executive and Legislative Powers

Hamilton: "With regard to the intermixture of powers...the union of the executive with the Senate, in the article of treaties, is no infringement of that rule.... The essence of the legislative authority is to enact laws, or, in other words, to prescribe rules for the regulation of the society; while the execution of the laws and the employment of the common strength, either for this purpose or for the common defense, seem to comprise all the functions of the executive magistrate. The power of making treaties is, plainly, neither the one nor the other. It relates neither to the execution of the subsisting laws nor to the enaction of new ones; and still less to an exertion of the common strength. Its objects are CONTRACTS with foreign nations which have the force of law, but derive it from the obligations of good faith. They are not rules prescribed by the sovereign. The power in question seems therefore to form a distinct department, and to belong, properly, neither to the legislative nor to the executive. The qualities...indispensable in the management of foreign negotiation point out the executive as the most fit agent in those transactions; while the vast importance of the trust and the operation of treaties as laws plead strongly for the participation of the whole or a portion of the legislative body in the office of making them.

"A man raised from the station of a private citizen to the rank of Chief Magistrate, possessed of a moderate or slender fortune, and looking forward to a period not very remote when he may probably be obliged to return to the station from which he was taken, might sometimes be under temptations to sacrifice his duty to his interest, which it would require superlative virtue to withstand. An avaricious man might be tempted to betray the interest of the state to the acquisition of wealth. An ambitious man might make his own aggrandizement, by the aid of a foreign power, the price of his treachery

to his constituents. The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States."[19]

PROVISION

154

From Article II.2.2

The President shall nominate and, with the advice and consent of the Senate, appoint ambassadors, public ministers, consuls, judges of the Supreme Court, and all other officers of the United States not otherwise provided for in this Constitution.

This provision gave the President the RIGHT to nominate and the Senate the RIGHT to confirm or reject every important new appointment of judges and administrators who would serve in the government of the United States.

Benjamin Franklin and several others attending the Constitutional Convention felt that the appointive power in the President might lead him to refuse to sign certain bills unless the Senate concurred in the appointment of friends and political associates to whom the Senate might otherwise object. However, in practice, this did not prove to be the case.

The first appointment to the Cabinet to be denied confirmation by the Senate was that of Roger B. Taney (later Chief Justice of the Supreme Court), who had been nominated by Andrew Jackson to be Secretary of the Treasury in 1834. The objection was based on the fact that Taney had helped Jackson dismantle the United States Bank, which was greatly resented in Congress. The rejection of Taney was therefore an attempt to get even with President Jackson rather than being a reflection on the character of Roger B. Taney. However, it did demonstrate that political considerations, in addition to the qualifications of the candidate, would play an important role in Senate confirmations.

There was extensive debate over this provision of the Constitution. Some of the questions which had to be answered included the following:

- *Under this provision, is the Senate rather than the President in a position to control the choosing of these important officials?*

Actual Choice Is with the President, Not the Senate

Hamilton: "It will be the office of the President to *nominate,* and, with the advice and consent of the Senate, to *appoint.* There will, of course, be no exertion of *choice* on the part of the Senate. They may defeat one choice of the Executive, and oblige him to make another; but they cannot themselves *choose*— they can only ratify or reject the choice of the President."[20]

• *What is the main advantage in having the Senate confirm the appointment of high officials in the government?*

Senate Approval Considered a Salutary Restraint on the President

Hamilton: "Though it might...be to that the executive might occasionally influence some individuals in the Senate, yet the supposition that he could in general purchase the integrity of the whole body would be forced and improbable.... The necessity of its co-operation in the business of appointments will be a considerable and salutary restraint upon the conduct of that magistrate."[21]

This Provision the Most Efficient Way to Get Fit Appointments

Randolph: "He laid great stress on the responsibility of the executive, as a security for fit appointments. Appointments by the legislatures have generally resulted from cabal, from personal regard, or some other consideration than a title derived from the proper qualifications. The same inconveniences will proportionally prevail, if the appointments be referred to either branch of the legislature, or to any other authority administered by a number of individuals."[22]

• *Is it important that the President have the power of selecting his own officers when they will be serving the people at large?*

Why the President Is Best Equipped to Make Nominations

G. Morris: "First, the states, in their corporate capacity, will frequently have an interest stake on the determination of the judges. As in the Senate the states are to vote, the judges ought not to be appointed by the Senate. Next to the impropriety of being judge in one's own cause, is the appointment of the judge. Secondly, it had been said, the executive would be uninformed of characters. The reverse was the truth. The Senate will be so. They must take the character of candidates from the flattering pictures drawn by their friends. The executive, in the necessary intercourse with every part of the United States required by the nature of his administration, will or may have the best possible information. Thirdly, it had been said that a jealousy would be entertained of the executive. If the executive can be safely trusted with the command of the army, there cannot surely be any reasonable ground of jealousy in the present case. He added that if the objections against an appointment of the executive by the legislature had the weight that had been allowed, there must be some weight in the objection to an appointment of the judges by the legislature, or by any part of it."[23]

Why the President Must Have Power to Choose His Subordinates

Hamilton: "The administration of government, in its largest sense, comprehends all the operations of the body politic, whether legislative, executive, or judiciary; but in its most usual and perhaps in its most precise signification, it is limited to executive details, and falls peculiarly within the province of the executive department. The actual conduct of foreign negotiations, the preparatory plans of finance, the application and disbursement of the public moneys in conformity to the general appropriations of the legislature, the arrangement of the army and navy, the direction of the operations of war—these, and other matters

of a like nature, constitute what seems to be most properly understood by the administration of government. The persons, therefore, to whose immediate management these different matters are committed ought to be considered as the assistants or deputies of the Chief Magistrate, and on this account they ought to derive their offices from his appointment, at least from his nomination, and ought to be subject to his superintendence."[24]

• *What is to prevent the President from appointing mediocre cronies?*

Senate Approval Will Help Prevent Appointment of Those Unfit to Serve

Hamilton: "To what purpose then require the co-operation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. And, in addition to this, it would be an efficacious source of stability in the administration.

"It will readily be comprehended that a man who had himself the sole disposition of offices would be governed much more by his private inclinations and interests than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body."[25]

• *Might not the President and the Senate combine to appoint unfit candidates?*

Combining to Make Unfit Appointments Would Disgrace Both President and Senate

Hamilton: "If an ill appointment should be made, the executive, for nominating, and the Senate, for approving, would participate, though in different degrees, in the opprobrium and disgrace."[26]

• *What happens when legislatures make appointments?*

Appointments by Legislatures Not Truly Responsible

C.C. Pinckney: "The treasurer is appointed by joint ballot in South Carolina. The consequence is that bad appointments are made and the legislature will not listen to the faults of their own officer."[27]

Combination of Presidential Nomination with Senate Approval Provides Security

G. Morris: "As the President was to nominate, there would be responsibility; and as the Senate was to concur, there would be security. As Congress now make appointments, there is no responsibility."[28]

Appointment of Judges by Legislatures Proved Unsatisfactory

Wilson: "Opposed the appointment of judges by the national legislature. Experience showed the impropriety of such appointments by numerous bodies. Intrigue, partiality, and concealment were the necessary consequences. A principal reason for unity in the executive was that officers might be appointed by a single, responsible person."[29]

A Legislature Favors Its Own Members for Appointment

Madison: "Disliked the election of the judges by the legislature, or any numerous body. Besides the danger of intrigue and partiality, many of the members were not judges of the requisite qualifications. The legislative talents, which were very different from those of a judge, commonly recommended men to the favor of legislative assemblies. It was known, too, that the accidental circumstances of presence and absence, of being a member or not a member, had a very undue influence on the appointment."[30]

Legislative Appointments Too Partisan

Madison: "Objected to an appointment by the whole legislature. Many of them are incompetent judges of the requisite qualifications. They were too much influenced by their partialities. The candidate who was present, who had displayed a talent for business in the legislative field, who had, perhaps, assisted ignorant members in business of their own, or of their constituents, or used other winning means, would, without any of the essential qualifications for an expositor of the laws, prevail over a competitor not having these recommendations, but possessed of every necessary accomplishment."[31]

Appointments by Senate As Objectionable As Appointments by House

G. Morris: "Argued against the appointment of officers by the Senate. He considered the body as too numerous for that purpose, as subject to cabal, and as devoid of responsibility. If judges were to be tried by the Senate, according to a late report of a committee, it was particularly wrong to let the Senate have the filling of vacancies which its own decrees were to create."[32]

- *Where was appointment by the executive first practiced on the state level?*

Massachusetts Set the Precedent for This Procedure

Gorham: "He suggested that the judges be appointed by the executive with the advice and consent of the second branch, in the mode prescribed by the constitution of Massachusetts. This mode had been long practiced in that country and was found to answer perfectly well."[33]

- *Who is the most likely to be blamed for bad appointments?*

Bad Appointments Will Lead to Public Censure of the President

Gorham: "Remarked that the Senate could have no better information than the executive. They must, like him, trust to information from the members belonging to the particular states where the candidate resided. The executive would certainly be more answerable for a good appointment as the whole blame of a bad one would fall on him alone. He did not mean that he would be answerable under any other penalty than that of public censure, which with honorable minds was a sufficient one."[34]

- *As originally designed, how did this provision procure the approval of both the people and the states?*

Reasons Why Executive Appointment Was Popular

Madison: "First, that it secured the responsibility of the executive, who would

in general be more capable and likely to select fit characters than the legislature, or even the second branch of it, who might hide their selfish motives under the number concerned in the appointment. Secondly, that in case of any flagrant partiality or error in the nomination, it might be fairly presumed that ... the second branch would join in putting a negative on it. Thirdly, that as the second branch was very differently constituted, when the appointment of the judges was formerly referred to it, and was now to be composed of equal votes from all the states, the principle of compromise which had prevailed in other instances required in this that there should be concurrence of two authorities, in one of which the people, in the other states, should be represented. The executive magistrate would be considered as a national officer, acting for and equally sympathizing with every part of the United States. If the second branch alone should have this power, the judges might be appointed by a minority of the people, though by a majority of the states; which could not be justified on any principle, as their proceedings were to relate to the people rather than to the states; and as it would, moreover, throw the appointments entirely into the hands of the northern states, a perpetual ground of jealousy and discontent would be furnished to the southern states."[35]

- *Should the confirmation require two-thirds of the Senators present or a simple majority?*

Consent of a Majority Sufficient for Approval or Rejection

Madison: "Observed that he was not anxious that two-thirds should be necessary, to disagree to a nomination.... He was content to ... let a majority reject."[36]

PROVISION

155

From Article II.2.2

The Congress may, by law, delegate to the President, the various courts, or the heads of departments authority to appoint inferior officers.

This provision gave the Congress the RIGHT to authorize the President, chief administrators, and judges to appoint lesser officers without going through the elaborate confirmation process required for the more important positions.

J. Edgar Hoover's appointment as director of the Federal Bureau of Investigation came through the Attorney General because this appointment was considered one of the lesser offices. However, by the time the next director was appointed, the work of the FBI had become so important that the Congress required a confirmation with the advice and consent of the Senate.

PROVISION

156

From Article II.2.3

The President shall have power to fill vacancies which occur while the Senate is in recess, but such commissions shall expire at the end of the next session if the appointment has not been confirmed by the Senate.

This provision gives the President the RIGHT to make temporary appointments in order to fill vacancies to important positions while the Senate is not in session and therefore cannot confirm the appointments.

Of course, when the Senate does convene, the name of the temporary appointee must be presented for confirmation, and if no affirmative action is taken by the end of the session, the temporary appointment is terminated even without a formal rejection of the appointee.

The Founders' comments include the following:

Why the Provision Is Necessary

MacLaine: "Congress are not to be sitting at all times; they will only sit from time to time, as the public business may render it necessary. Therefore the executive ought to make temporary appointments, as well as receive ambassadors and other public ministers. This power can be vested nowhere but in the executive, because he is perpetually acting for the public; for, though the Senate is to advise him in the appointment of officers, etc., yet, during the recess, the President must do this business, or else it will be neglected; and such neglect may occasion public inconveniences."[37]

This Is Merely a Temporary Expedient When the Senate Is Not in Session

Hamilton: "The ordinary power of appointment is confined to the President and Senate *jointly,* and can therefore only be exercised during the session of the Senate; but as it would have been improper to oblige this body to be continually in session for the appointment of officers, and as vacancies might happen *in their recess,* which it might be necessary for the public service to fill without delay, the succeeding clause is evidently intended to authorize the President, *singly,* to make temporary appointments."[38]

As an emergency expedient, the President can temporarily fill vacancies while the Senate is in recess, but he must request approval when it reconvenes.

PROVISION 157

From Article II.3

The President shall, from time to time, give the Congress a report on the state of the union.

This provision gives the President the RIGHT to appear before Congress at various times to report on any serious problems or advise the Congress and the American people on the "state of the Union."

This mandate has been carried out by the annual and the special messages of the Presidents at the time of the opening of Congress or when an emergency or unusual circumstance has arisen.

Washington and Adams delivered their messages orally. Jefferson, however, asked permission to submit his reports in writing because speaking put an uncomfortable strain on his voice. The written message remained the practice of the various presidents until 1913, when President Wilson revived the oral report to Congress.

Not only is the President required by the Constitution to give information to Congress from time to time, but the Congress has used this provision as a basis for requesting information.

The first time a Congress asked for information was in connection with the defeat of General St. Clair's forces in 1791 by the Miami Indians. The Congress requested all of the papers connected with this defeat, a move which President Washington knew could create an important precedent. After a three-day consideration of the question by Washington and his cabinet, it was decided that the House had a right to review these papers. However, in 1909 President Theodore Roosevelt refused to permit the Attorney General to answer questions concerning the failure of the government to bring an antitrust suit against a certain corporation. More recently, several of the presidents have refused to allow employees to turn over files to the Senate or House investigating committees on the basis of "executive privilege."

However, the Supreme Court ruled that President Nixon could not use executive privilege for the purpose of withholding certain tape recordings of his official conversations at the White House.

PROVISION 158

From Article II.3

The President shall recommend to the Congress such measures as he shall consider necessary and expedient to improve the general welfare of the nation.

This provision gives the President the RIGHT to recommend needed legislation to Congress without violating the doctrine of separation of powers.

PROVISION

159

From Article II.3

On extraordinary occasions, the President may call together both the House of Representatives and the Senate in a special session.

This provision gives the President the RIGHT to convene the Congress in a special session whenever he feels critical circumstances warrant it.

The important functions of declaring war, appropriating funds for military action, borrowing emergency resources, and so forth, are all powers which rest exclusively in the Congress, not the President. This provision gives the President the power to call the Congress into action when needed.

This provision was necessary because originally the Congress met for only a few months each year. Today, the Congress convenes almost the year round.

Alexander Hamilton made the following comment concerning this provision:

"In regard to the power of convening either house of the legislature, I shall barely remark that in respect to the Senate, at least, we can readily discover a good reason for it. As this body has a concurrent power with the executive in the article of treaties, it might often be necessary to call it together with a view to this object, when it would be unnecessary and improper to convene the House of Representatives."[30]

PROVISION

160

From Article II.3

Should the House and the Senate disagree as to the date of their adjournment, the President may designate the time when their adjournment shall take place.

Under this provision of the Constitution, the President has the RIGHT to intervene in a dispute over the time of adjournment and fix the time of adjournment for Congress.

It has never been necessary for the President to exercise this provision. The very existence of this power in the President has been sufficient to induce the House and Senate to reach an adjournment agreement even during periods of intense disputation.

One of the most serious weaknesses of the British Constitution was the power of the king to call and dissolve Parliaments at will. To prevent similar difficulties aris-

ing in the United States, the Founders decided that Congress shall assemble at least once a year; that neither House shall adjourn for more than three days without the consent of the other; that they shall not meet in any place other than that where the two houses are sitting; and if they cannot agree upon adjournment, the President may adjourn them.

PROVISION

161

From Article II.3

The President shall receive ambassadors and other public ministers from foreign nations.

This provision gives the President the RIGHT to determine whether or not the United States will maintain diplomatic relations with another country.

The President sometimes receives foreign diplomats himself, but usually this formality is handled by the State Department or someone assigned by the President to welcome a particular diplomat. This reception constitutes diplomatic recognition of the nation which the diplomat represents. The President can break off diplomatic relations by declaring a particular nation's ambassador a *persona non grata* (a person not welcome) and request that the ambassador be recalled by his government. If the ambassador refuses to leave voluntarily, he can be deported. The President can also break off diplomatic relations by calling the American ambassador home.

Occasionally, a strain in diplomatic relations occurs when the conduct of foreign officials is offensive to the dignity or welfare of the United States. President Cleveland in 1888 gave the ambassador from England his passport because the ambassador had written a letter during the presidential political campaign which was widely published and made comments adverse to the Cleveland administration. It has been necessary for the United States to send a number of Soviet officials home because of their involvement in espionage activities against the United States. In some instances, where there is a delicate relationship between countries, a representative may be recalled by his government upon the request of the President so that the matter is not made an object of extensive publicity.

A different situation arose in 1845 when Almonte, the Mexican minister to Washington, demanded his passport and went home after Congress passed a resolution accepting the Republic of Texas into the union as a new state.

Alexander Hamilton explains why it was important to have the President rather than the Congress handle these diplomatic relations:

"The President shall receive ambassadors and other public ministers.... [This] is more a matter of dignity than of authority. It is a circumstance which will be without consequence in the administration of the government; and it was far more convenient that it should be arranged in this manner than that there

should be a necessity of convening the legislature, or one of its branches, upon every arrival of a foreign minister, though it were merely to take the place of a departed predecessor."[40]

PROVISION

162

From Article II.3

The President shall see that the federal laws are faithfully administered and executed.

This provision gives the American people the RIGHT to have their President faithfully administer the laws of the land.

It is the duty of the President to see that the federal laws are enforced as the supreme law of the land and that anything in the constitutions or laws of the various states to the contrary be subordinated to the federal statutes. This enforcement may be done through the courts, or, where force is necessary, the President is authorized to call out the militia or the army to restore peace or enforce the law.

Where the President is enforcing the laws of the nation, the judiciary has no authority to intervene. After the Civil War several reconstruction acts were passed by Congress and one of these instructed the executive branch to take over certain southern states where no adequate government existed and divide them into five military districts with a military officer in charge of each. When the President attempted to carry out these instructions, an effort was made to obtain an injunction in the federal court. The court ruled that the President was performing his assigned duty and the court had no jurisdiction to intervene.

In connection with a strike in Chicago during 1895, the court sustained the power of the President to intervene with military force after a court had enjoined the strikers from interfering with the transportation and delivery of the mails.

PROVISION

163

From Article II.3

The President shall commission all officers of the United States.

This provision gives the President the RIGHT to commission all federal military officers who will serve under him as their commander in chief.

This means that when the state militias are called up for federal service they will use their own officers up to a certain level, but the presiding officers will be appointed by the President as commander in chief.

PROVISION

164

From Article II.4

The President, Vice President, and all civil officers of the United States shall be subject to removal from office on impeachment for, and on conviction of, treason, bribery, or other high crimes and misdemeanors.

This gives the House of Representatives the RIGHT to bring impeachment charges and the Senate the RIGHT to convict and remove from office any official, including the President and Vice President, if they are found guilty of treason, bribery, or other high crimes and misdemeanors.

Note that the offenses for which officials of the government can be impeached are deliberately left very broad. Treason and bribery were two of the most reprehensible offenses at the time of the Convention and both had played their part in creating serious military difficulties during the Revolutionary War. These two offenses were therefore specifically mentioned, but the use of the words "high crimes and misdemeanors" remained sufficiently broad to embrace practically any serious misbehavior while in office.

A member of Congress is not a civil officer within the meaning of this section. However, either House may conduct an investigation and remove any member who is guilty of offensive conduct.

If an officer resigns from office he is still subject to impeachment for acts committed while in office if the members of the House of Representatives elect to do so. Furthermore, if a person is impeached and subsequently found guilty before the Senate, he not only suffers loss of his particular office but he may subsequently be prosecuted for any crimes he may have committed in connection with the charges brought up during the impeachment proceedings.

As we have previously mentioned, a two-thirds vote of the Senate is required for conviction in an impeachment proceeding. The first president to be impeached was Andrew Johnson, who angered the radical Republicans because he would not support their vindictive policies toward the South after the Civil War. In spite of the impeachment charges, however, the Senate failed by one vote to convict Andrew Johnson. The second President to be impeached was William Jefferson Clinton, whom the Senate also failed to convict. In 1974, President Richard Nixon, resigned from office when he heard that the House of Representatives was in the process of preparing charges to impeach him.

In connection with the powerful tool of impeachment, the Founders carefully discussed many questions including the following:

- *Can the House bring impeachment proceedings against anyone other than federal officials?*

Impeachment Proceedings Apply Only to Officials of the Federal Government

MacLaine: "As the government is solely instituted for the United States, so the power of impeachment only extends to officers of the United States."[41]

• *Are members of Congress subject to impeachment, and if not, how can they be disciplined for offensive conduct?*

Members of Congress Subject to Expulsion but Not Impeachment

MacLaine: "Members of the legislative body are never, as such, liable to impeachment, but are punishable by law for crimes and misdemeanors in their personal capacity.... But in Congress, a member of either house can be no officer."[42]

The Constituents of a Congressman Decide If He Has Erred

Johnston: "Only officers of the United States were impeachable. I never knew any instance of a man being impeached for a legislative act; nay, I never heard it suggested before.... A representative is answerable to no power but his constituents. He is accountable to no being under heaven but the people who appointed him."[43]

Impeachment Designed to Protect the Nation Against Incompetence

Madison: "Thought it indispensable that some provision should be made for defending the community against the incapacity, negligence, or perfidy of the chief magistrate. The limitation of the period of his service was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of peculation or oppression. He might betray his trust to foreign powers. The case of the executive magistracy was very distinguishable from that of the legislature, or any other public body, holding offices of limited duration. It could not be presumed that all, or even the majority, of the members of an assembly would either lose their capacity for discharging, or be bribed to betray, their trust. Besides, the restraints of their personal integrity and honor, the difficulty of acting in concert for purposes of corruption was a security to the public. And if one or a few members only should be seduced, the soundness of the remaining members would maintain the integrity and fidelity of the body. In the case of the executive magistracy, which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the republic."[44]

• *What recourse does the Senate have if the President deceives them in order to get approval of a particular treaty?*

President Can Be Impeached for Giving False Information to the Senate

Iredell: "The President must certainly be punishable for giving false information to the Senate. He is to regulate all intercourse with foreign powers, and it is his duty to impart to the Senate every material intelligence he receives. If it should appear that he has not given them full information, but has concealed important intelligence which he ought to have communicated, and by that means induced them to enter into measures injurious to their country, and which they would not have consented to had the true state of things been disclosed to them—in this case, I ask whether, upon an impeachment for a misdemeanor upon such an account, the Senate would probably favor him."[45]

• *What is the punishment for a person convicted of impeachment charges?*

The Punishment Is Removal from Office and Future Disqualification

Johnston: "The punishment goes no farther than to remove and disqualify civil officers of the United States, who shall, on impeachment, be convicted of high misdemeanors. Removal from office is the punishment—to which is added future disqualification."[46]

• *What if the offense is a crime against an individual and has nothing to do with his official capacity?*

Impeachment Is Only for Crimes Against the Public by a Public Officer

Johnston: "If an officer commits an offence against an individual, he is amenable to the courts of law. If he commits crimes against the state, he may be indicted and punished. Impeachment only extends to high crimes and misdemeanors in a *public office.* It is a mode of trial pointed out for great misdemeanors against the public."[47]

• *Where the law is concerned, is the President subject to prosecution?*

The President Is Subject to Prosecution

Iredell: "Under our Constitution ... no man has an authority to injure another with impunity. No man is better than his fellow-citizens, nor can pretend to any superiority over the meanest man in the country. If the President does a single act by which the people are prejudiced, he is punishable himself, and no other man merely to screen him. If he commits any misdemeanor in office, he is impeachable, removable from office, and incapacitated to hold any office of honor, trust, or profit. If he commits any crime, he is punishable by the laws of his country, and in capital cases may be deprived of his life."[48]

Impeachment Does Not Prevent a Person from Being Tried for His Crimes

Iredell: "It is evident that an officer may be tried by a court of common law. He may be tried in such a court for common-law offences, whether impeached or not."[49]

Federal Office Does Not Put an Official Above the Common Law of the States

MacLaine: "Notwithstanding the mode pointed out for impeaching and trying, there is not a single officer but may be tried and indicted at common law.... Thus you find that no offender can escape the danger of punishment."[50]

• *What was the remedy for misconduct in office by the leader of a country prior to the development of the impeachment process?*

In Former Times Leaders Were Removed by Assassination

Franklin: "History furnishes one example only of a first magistrate being formally brought to public justice. Every body cried out against this as unconstitutional. What was the practice before this, in cases where the chief magistrate rendered himself obnoxious? Why, recourse was had to assassination, in which he was not only deprived of his life but of the opportunity of vindicating his character. It would be the best way, therefore, to provide in the Constitution for the regular punishment of the executive, where

his misconduct should deserve it, and for his honorable acquittal, where he should be unjustly accused."[51]

Impeachment to Replace Tumults and Insurrections As a Means of Remedy

Randolph: "The propriety of impeachments was a favorite principle with him. Guilt, wherever found, ought to be punished. The executive will have great opportunites of abusing his powers; particularly in time of war, when the miltary force, and in some respects the public money, will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults and insurrections."[52]

• *Does the maxim "The king can do no wrong" apply to the President of the United States?*

Americans Do Not Believe the President "Can Do No Wrong"

Gerry: "He hoped the maxim would never be adopted here that the chief magistrate could do no wrong."[53]

• *What about bribery of the President by a foreign power?*

President Should Be Impeached for Treachery or Foreign Bribery

G. Morris: "He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first magistrate in foreign pay, without being able to guard against it by displacing him. One would think the king of England well secured against bribery. He has, as it were, a fee simple in the whole kingdom. Yet Charles II was bribed by Louis XIV. The executive ought, therefore, to be impeachable for treachery. Corrupting his electors and incapacity were other causes of impeachment. For the latter he should be punished, not as a man, but as an officer, and punished only by degradation from his office. This magistrate is not the king, but the prime minister. The people are the king. When we make him amenable to justice, however, we should take care to provide some mode that will not make him dependent on the legislature."[54]

A Challenge for Americans Today

It is clear from a study of Article II that the Founders had a very carefully structured concept of what the high office of President was supposed to be. This office was designed to give the President all the strength and independence needed to carry out the six specific functions assigned to him, but the Founders required that he operate within a carefully circumscribed sphere of limited authority.

The fact that the Executive Branch has now acquired gigantic dimensions of discretionary power—far beyond what the Founders intended—is a matter of the most profound importance to this and all future generations of Americans. The problem is further complicated by the fact that this extravagant expansion of executive power was done with the encouragement of Congress and the consent of the Supreme Court.

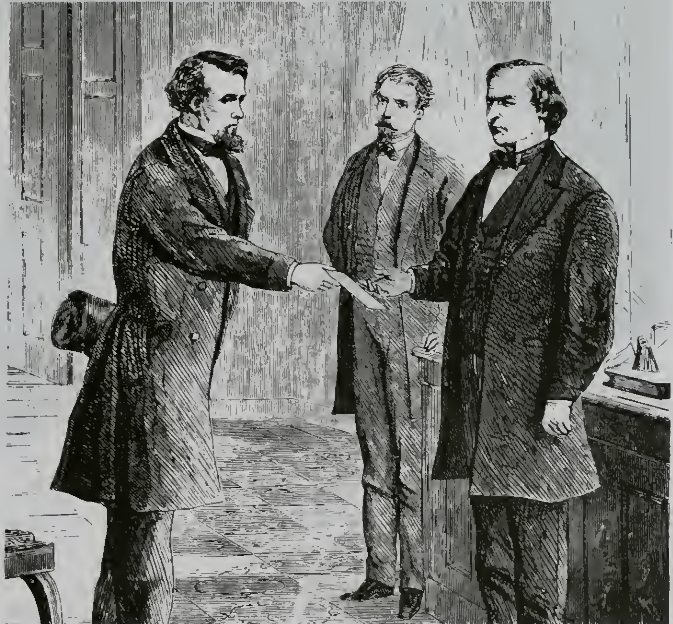
Fortunately, there are several safety nets built into the Constitution so that any unauthorized usurpation of authority can be dismantled by peaceful means. The most important of these is the right of the American people to vote into power those who recognize the problem and are willing to do something about it.

Another device is the power of the state legislatures to call for a convention

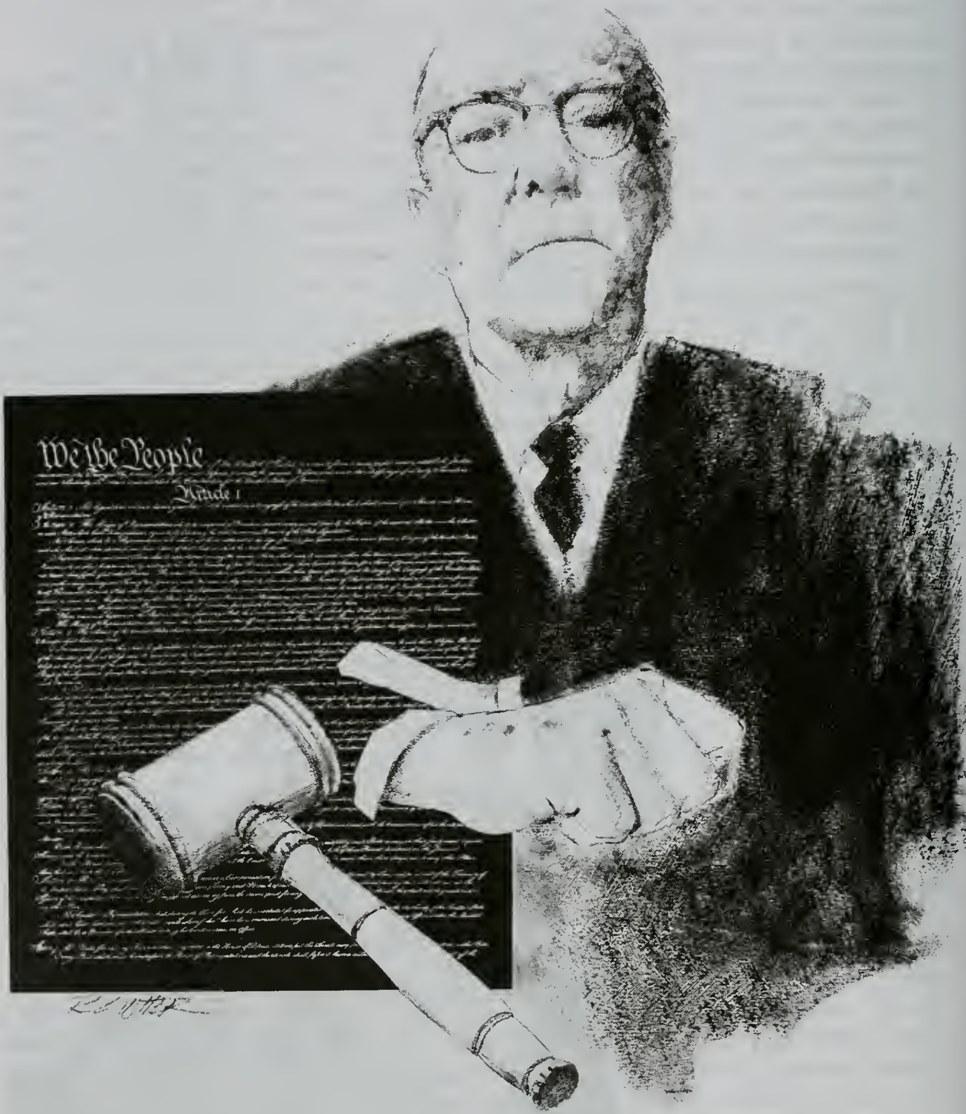
of the states under Article V and provide whatever amendments are necessary to bring the affairs of the people back within the channels prescribed by the Constitution. History may very well record that taking these corrective measures is one of the most important challenges facing Americans today.

---

1. Allison et al., *The Real Thomas Jefferson*, pp. 215–16.
2. Elliot, 4:107–8.
3. *Federalist Papers*, No. 69.
4. Ibid., No. 74.
5. Elliot, 2:109–10.
6. Ibid., 4:110–12.
7. *Federalist Papers*, No. 69.
8. Madison, p. 471.
9. *Federalist Papers*, No. 74.
10. Elliot, 3:17.
11. Madison, p. 571.
12. Elliot, 4:113–14.
13. Ibid., p. 281.
14. Ibid.
15. Ibid., 2:506.
16. Ibid., 3:365.
17. Ibid., p. 511.
18. *Federalist Papers*, No. 64.
19. Ibid., No. 75.
20. Ibid., No. 66.
21. Ibid., No. 76.
22. Madison, p. 301.
23. Ibid., p. 302.
24. *Federalist Papers*, No. 72.
25. Ibid., No. 76.
26. Ibid., No. 77.
27. Madison, p. 562.
28. Ibid., p. 529.
29. Ibid., p. 56.
30. Ibid., p. 57.
31. Ibid., p. 97.
32. Ibid., p. 455.
33. Ibid., p. 275.
34. Ibid., p. 276.
35. Ibid., p. 301.
36. Ibid., p. 302.
37. Elliot, 4:135.
38. *Federalist Papers*, No. 67.
39. Ibid., No. 77.
40. Ibid., No 69.
41. Elliot, 4:45.
42. Ibid., p. 34.
43. Ibid., pp. 33–34.
44. Madison, p. 291.
45. Elliot, 4:127.
46. Ibid., p. 35.
47. Ibid., p. 48.
48. Ibid., p. 109.
49. Ibid., p. 37.
50. Ibid., p. 45.
51. Madison, p. 290.
52. Ibid., p. 292.
53. Ibid., p. 291.
54. Ibid., p. 293.



Andrew Johnson receives his impeachment notice.


We the People
Article 1

PART FOUR

ARTICLE III— THE JUDICIAL BRANCH

CHAPTER

THE MOST POWERFUL JUDICIARY IN THE WORLD

Just across the park from the Capitol building in Washington, D.C., stands a massively impressive structure of white marble with giant fluted pillars. Above those pillars are inscribed the words, "Equal Justice Under Law." This is the Supreme Court of the United States of America.

Every American should know more about what happens behind the massive marble facade of pillars and statues which marks the entrance to the Supreme Court Building. It is there, from the first Monday in October until late the following June, that the world's most powerful body of judicial magistrates proclaims the latest version of what must be accepted as the supreme law of the land for more than 300 million Americans.

Behind it all, there is an interesting story.

The Hazardous American Experiment with a New Kind of Government

The Founding Fathers were determined to build a new kind of civilization specifically designed to preserve human freedom on a permanent basis. No nation had ever permanently achieved it before. In fact, during more than 5,000 years the word *government* had represented dungeons, executions, heavy taxes, serfdom, and, for millions of people, outright slavery. The Founders therefore looked upon government as an inescapable necessity, but a highly dangerous instrument. This led George Washington to say, "Government is not reason, it is not eloquence—it is force! Like fire, it is a dangerous servant and a fearful master."[1]

Why is government so likely to become a "fearful master"? The Founders felt it is because "government" consists of nothing more than a conglomerate of human beings who have within their basic nature the instinct to continuously expand whatever power is placed in their hands. This is true not only of evil men but of public-spirited and well-meaning men as well.

The Founders understood human nature. As Jefferson wrote:

"It would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights; that confidence is everywhere the parent of despotism; free government is founded in jealousy, and not in confidence; it is jealousy, and not confidence which prescribes limited constitutions to bind down those whom we are obliged to trust with power; that our Constitution has accordingly fixed the limits to which, and no farther, our confidence may go....

"In questions of power, then, let no more be said of confidence in man, *but bind him down from mischief by the chains of the Constitution.*"[2]

The Chains of the Constitution

But what "chains of the Constitution" shall be used? Based on their study of the past, plus the hard-learned lessons of their own colonial experience, the Founders came up with the following formula:

1. Assign to the government only specific, *limited powers.*

2. *Separate the powers* of government vertically (local, state, federal), and horizontally (legislative, executive, judicial).

3. Provide a system of *checks and balances* between the various departments and levels of government so that there is a built-in system of self-repair which can deal with abuses of power by peaceful means and not require the people to resort to revolution again.

4. Record the desires and intentions of the people in a *written Constitution* which will remain *inflexible* and never changed except by an amendment.

5. Control the human instinct to continually grasp for additional power by restraining those in governmental offices with the inflexible *chains of the Constitution.* Never allow those restraints to become obsolete or neglected. Human nature does not change, and experience has demonstrated that the rights of the people will ultimately be shattered if the constitutional barriers are allowed to be broken down.

6. Set up a *guardian* to see that these Constitutional provisions are strictly enforced.

How the Supreme Court Evolved into Its Role as "Guardian" of the Constitution

The gradual evolution of the Supreme Court into its role as "guardian of the Constitution" is known as the power of "judicial review." This means that the Court can review acts of Congress and acts of the state legislatures to make certain that they do not violate the provisions of the Constitution as designed by the Founding Fathers.

It is interesting that this extremely important power under which the Supreme Court makes its "judicial review" of constitutional issues is not specifically spelled out in the Constitution.[3] However, it is clearly implied by the so-called "supremacy clause," which makes the Constitution and the federal laws and treaties the supreme law of the land. Obviously, the Supreme Court would have to use its judicial powers to enforce the supremacy clause, since otherwise it would be meaningless. That this was the intent of at least some of the Founders is borne out by the words of Alexander Hamilton:

"The courts were designed to be an intermediate body between the people and the legislature in order, among other things, to keep the latter [the Congress] within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as a fundamental law. It therefore belongs to them [the judiciary] to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents."[4]

In other words, the Supreme Court is to measure all legislative acts against the will of the people as it was set forth in their original charter of liberty — the Constitution of the United States.

A Major Weakness Discovered

But there is one thing missing here. What happens if the Supreme Court imposes ITS will upon the nation, contrary to the specific provisions of the Constitution? The Founders knew this possibility existed, and Alexander Hamilton wrote:

"The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body."[5]

Hamilton had already pointed out that an unconstitutional act of the legislative body is null and void. It should be clear, then, that an unconstitutional edict by the Supreme Court would be equally invalid.

But if this happens, where is the remedy? By what means do the people protect themselves? Apparently the Founders were so concerned about an overzealous Congress that they neglected to protect themselves from an overzealous judiciary. The only checks and balances provided in the Constitution are as follows:

1. All judges have to be appointed by the President with the advice and consent of the Senate.
2. Article III, section 2, clause 2, authorizes the Congress to restrict the jurisdiction of the Supreme Court, with such exceptions and regulations as it shall make.

3. The Congress can impeach judges for "treason, bribery, or other high crimes and misdemeanors," but not for an unpopular decision. Even when the Supreme Court has seriously violated its constitutional limitations by making new laws through judicial decree, no effective congressional action has been asserted.

From this it will be readily seen that insofar as checks on the judiciary were concerned, a major loophole was left in the basic structure of the Constitution. Perhaps the Founders were too busy to read an article in a New York paper signed "Brutus" (believed to have been Robert Yates) which said:

"It is of great importance to examine with care the nature and extent of the judicial power, because those [Supreme Court judges] are to be rendered totally independent, both of the people and the legislature, both with respect to their offices and salaries. No errors they commit can be corrected.... The only causes for which they can be displaced [are] convictions of treason, bribery, and high crimes and misdemeanors.... The power of the judicial will enable them to mold the government into almost any shape they please."[6]

Of course, the Founders may have assumed that the members of the Supreme Court would adhere to the traditional principles of "strict interpretation" which had been thoroughly established during several centuries of English common law. Had this been done, modern Americans would find themselves living in a much more stable society than at present. Our history demonstrates that too often the Supreme Court has ignored clearly stated principles of the Founders and interpreted the Constitution to suit the social, economic, or political aspirations of the court. This proved to be the Achilles' heel in the structure of the Constitution which allowed the Supreme Court to rapidly become what "Brutus" predicted it would. This, then, brings us to an important question.

Who Was Right, Marshall or Jefferson?

The bitter controversy over who should be the guardian of the Constitution was personified in two equally devout American patriots who were cousins. One was Thomas Jefferson, who wanted the states to protect the people from an abusive federal government, and the other was John Marshall, who wanted the Supreme Court to protect the people from the arbitrary abuses of the various states.

These men had much in common:

1. They were both trained in law by George Wythe, one of the foremost legal minds in America.

2. Both men had a reverential love for the Constitution as a charter of human liberty.

3. Both of them considered the people to be the source of all political authority and both looked upon the Constitution as the expressed will of the people.

4. Both of them cherished freedom as a sacred and unalienable legacy which had to be preserved if the great American experiment were to endure.

5. At the bottom line, both considered the primary purpose of government to be the protection of the people's rights.

But in spite of all of this unity, these two great patriots came to divergent conclusions on how best to guard the Constitution against intrusion.

Jefferson felt the greatest threat was a strong central government. He therefore considered the independent rights reserved to the states as the best safeguard against federal abuse and usurpation.

Marshall, on the other hand, had served in the Virginia state legislature four times between 1782 and 1795. He had seen enough chicanery on the state level to convince him that what the people needed was a uniformity of interpretation by the Supreme Court, so as to make sure that the rights of all of the people were protected on an equal basis in all of the states.

In the end, the fears of both men turned out to have merit. The federal government did extend its powers far beyond the dimensions allowed by the Constitution, and the states did impose upon their people a wide variety of arbitrary standards concerning the manner and extent to which the rights of the people would be protected.

Two hundred years later, Americans are still seeking the best solution. Those which are currently being considered need to be evaluated in terms of what both Jefferson and Marshall expressed in their various opinions. First of all, let us consider Jefferson's strong objections to the Supreme Court being set up as the exclusive and final arbiter of what the Constitution meant.

Jefferson's Objections to 'Judicial Review' As the Final Word for All Other Branches of Government

While serving as President, Jefferson wrote the following to Abigail Adams:

"You seem to think it devolved on the judges to decide on the validity of the sedition law, but nothing in the Constitution has given them a right to decide for the executive, more than to the executive to decide for them. Both magistrates are equally independent in the sphere of action assigned to them. The judges, believing the law constitutional, had a right to pass a sentence of fine and imprisonment, because the power was placed in their hands by the Constitution. But the executives, believing the law to be unconstitutional, were bound to remit the execution of it, because that power has been confided to them by the Constitution. That instrument meant that its coordinate branches should be checks on each other. But the opinion which gives to the judges the right to decide what laws are constitutional and what not, not only for themselves in their own sphere of action, but for the legislature and executive also in their spheres, would make the judiciary a despotic branch."[7]

Some time later he stressed the same point even more emphatically:

"The Constitution intended that the three great branches of the government should be coordinate, and independent of each other. As to acts, therefore, which are to be done by either, it has given no control to another branch.... It did not intend to give the judiciary...control over the executive.... I have long wished for a proper occasion to have the gratuitous opinion in *Marbury* v. *Madison* brought before the public, and denounced as not law."[8]

And again:

"My construction of the Constitution ... is that each department is truly independent of the others, and has an equal right to decide for itself what is the meaning of the Constitution in the cases sub-

mitted to its action; and especially where it is to act ultimately and without appeal."[9]

Finally, he came right out and pronounced judicial review a "dangerous doctrine." In 1820 he wrote to William Charles Jarvis the following:

"You seem . . . to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men, and not more so. They have, with others, the same passions for party, for power, and the privilege of their corps. . . . Their power [is] the more dangerous as they are in office for life, and not responsible, as the other functionaries are, to the elective control. The Constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruptions of time and party, its members would become despots. It has more wisely made all the departments co-equal and co-sovereign within themselves.

"If the [Congress] fails to pass laws for a census, for paying the judges and other officers of government, for establishing a militia, for naturalization as prescribed by the Constitution, or if they fail to meet in Congress, the judges cannot issue their mandamus to them; if the President fails to supply the place of a judge, to appoint other civil or military officers, to issue requisite commissions, the judges cannot force him. They can issue their mandamus or distringas to no executive or legislative officer to enforce the fulfillment of their official duties, any more than the President or [Congress] may issue orders to the judges or their officers. Betrayed by English example, and unaware, as it should seem, of the control of our Constitution in this particular, they have at times overstepped their limit by undertaking to command executive officers in the discharge of their executive duties; but the Constitution, in keeping three departments distinct and independent, restrains the authority of the judges to judiciary organs, as it does the executive and legislative to executive and legislative organs. . . .

"When the legislative or executive functionaries act unconstitutionally, they are responsible to the people in their elective capacity. The exemption of the judges from that is quite dangerous enough. I know no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them but to inform their discretion by education. This is the true corrective of abuses of Constitutional power.

"Pardon me, sir, for this difference of opinion. My personal interest in such questions is entirely extinct, but not my wishes for the longest possible continuance of our government on its pure principles; if the three powers maintain their mutual independence [of] each other it may last long, but not so if either can assume the authorities of the other."[10]

Why John Marshall Finally Won Out

History demonstrated Jefferson's concerns to be well founded, but so were John Marshall's anxieties borne out by the events of history. While it was true that the federal government grasped for power through the finality of Supreme Court decisions, it was also true that many of the states refused to uniformly protect the civil rights of all their citizens.

John Marshall clearly and emphatically

established his position when, as Chief Justice of the Supreme Court, he announced in *Marbury* v. *Madison* (1 Cr. 137), that the Supreme Court was the exclusive and final arbiter of what was constitutional and what was not, and furthermore, that its decisions were binding on all branches of government.

Marshall was simply affirming what he had said during the Virginia ratification convention. At that time he had asked: "To what quarter will you look for protection from an infringement of the Constitution, if you will not give the power to the judiciary? There is no other body that can afford such a protection."[11]

Marshall based his conclusions on three provisions of the Constitution.

1. The "supremacy clause," which says: "This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land." (Article VI.)
2. The "binding clause," which says: "All executive and judicial officers, both of the United States and of the several states, shall be bound by oath and affirmation to support this Constitution." (Article VI.)
3. The "judicial power clause," which says: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, ... " etc. (Article III, section 2.)

In spite of Jefferson's protests, *Marbury* v. *Madison* became the milestone case which gave the Supreme Court the last say on what was constitutional and what was not. Had the court restrained itself during the ensuing years and held to a strict interpretation of the intent of the Founders, its credibility would have remained untarnished. Unfortunately, however, its original position of defending "constitutional supremacy" gradually shifted to a defense of "judicial supremacy," just as Jefferson had feared—and that is where the matter rests today.

The Need for "Fixed Rule of Law"

No doubt one of the main reasons why the rule of *Marbury* v. *Madison* became the cornerstone for judicial review was the fact that it brought questions of law to a final decision, whereas the Jefferson approach did not. It is part of human nature to demand a decision on pending issues and have a "fixed rule of law" so people can get on with their affairs and conduct themselves accordingly. It reminds one of the old military cliche which proclaimed, "It is better to make a decision and be wrong, than to make no decision at all."

The federal courts have done that, but once they abandoned the touchstone of the Constitution as originally designed by the Founders, they began to wander far afield. In recent times, the Supreme Court has found itself facing a barrage of criticism resulting from reversing itself over a hundred times and frequently interpreting statutes quite differently from the obvious intent of the Congress. Furthermore, it often bases decisions on "public policy" and "modern doctrines," resulting in distorted interpretations of the Constitution which the Founders never would have recognized.

How to Interpret the Constitution

Of course, this could have been prevented if the courts had stayed with the doctrine of "constitutional supremacy" and interpreted the Constitution according to the original intent of the Founders. The Founders left no doubt as to how this

document should be read. When Jefferson became President he said:

"The Constitution on which our Union rests shall be administered by me according to the safe and honest meaning contemplated by the plain understanding of the people of the United States at the time of its adoption—a meaning to be found in the explanations of those who advocated, not those who opposed it.... These explanations are preserved in the publications of the time."[12]

Later, he emphasized the same views:

"On every question of construction, [let us] carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed."[13]

Jefferson felt the Constitution should be interpreted strictly. He wrote: "When an instrument admits two constructions, the one safe, the other dangerous, the one precise, the other indefinite, I prefer that which is safe and precise. I had rather ask an enlargement of power from the nation, where it is found necessary, than to assume it by a construction which would make our powers boundless. Our peculiar security is in the possession of a written Constitution. Let us not make it a blank paper by construction."[14]

These comments are similar to those expressed by the other leaders in the early chapters of the country's history. Chief Justice Taney expressed the traditional view of the Founders when he wrote:

"It [the Constitution] speaks not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of its framers, and was voted on and adopted by the people of the United States. Any other rule of construction would abrogate the judicial character of the Court and make it the mere reflect of the popular opinion or passion of the day."[15]

In a textbook, he wrote:

"The first and fundamental rule in the interpretation of all instruments is, to construe them according to the sense of the terms, and the intentions of the parties."[16]

The Danger Signals Appeared Early

In spite of the severe restrictions which were placed on the Supreme Court in its interpretation of the Constitution, it soon became apparent to Thomas Jefferson that this judicial body had the potential power of using judicial review to seriously distort the original intent of the Founders by twisting the meaning of the Constitution. Through clever "interpretations," Jefferson saw the possibility of the Supreme Court creating new laws and even using its opinions to unlawfully amend the Constitution. In 1821, he wrote:

"It has long, however, been my opinion, and I have never shrunk from its expression...that the germ of dissolution of our federal government is in the constitution of the federal judiciary; an irresponsible body, (for impeachment is scarcely a scare-crow) working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped from the States, and the government of all be consolidated into one. To this I am opposed; because, when all government, domestic and foreign, in little as in great things, shall be drawn to

Washington as the centre of all power, it will render powerless the checks provided of one government on another, and will become as venal and oppressive as the government from which we separated."[17]

In many respects the justices of the Supreme Court restrained themselves for several generations, but eventually the temptation to substitute their own wisdom for that of the Founders began to manifest itself with increasing frequency. Just as Jefferson had predicted, the court's decisions began to transfer both political and economic power to Washington. The Supreme Court became so involved in using judicial review, with nonconstitutional interpretations, that the Founders would have undoubtedly accused the court of "legislating" in some cases and "amending" the Constitution in others. In both situations the court was acting without authority, and there should have been some constitutional procedure to nullify their decisions.

Nationalizing Criminal Justice

Another critical development is the intervention of the federal courts in the administration of criminal justice within the states. The Fourteenth Amendment, with its "equal protection" clause and its "due process" clause, has been interpreted to mean that the federal Bill of Rights applies to the states as well as the federal government. This may seem perfectly innocent at first glance, since the rights of citizens should be protected. However, in practice it allows the federal courts to take over any state criminal case in which the defendant alleges that one or more of his civil rights (as set forth in the first eight amendments to the Constitution) have been violated.

Originally, it was intended that civil rights would be protected by the states in state criminal cases and by the federal government in federal cases. However, this latest approach by the Supreme Court, designed to expand the protection of federal civil rights to state cases, has not only violated the original intent of the Founders but has clogged the dockets of the federal courts with a staggering caseload which they are incapable of handling. In addition, it has seriously broken down the division of labor, as well as the sovereign independence of the two levels of government as designed by the Founders.

What Personal Qualifications Should Be Required for a Justice of the Supreme Court?

Another weakness in the judicial structure is the fact that appointments to the Supreme Court are often dominated by political considerations rather than the judicial competency of the nominee. This became rather shockingly apparent during the heyday of the Warren court, when that court became so highly controversial because of its frequent reversals of former Supreme Court decisions and its propensity for smashing traditional constitutional barriers.

In 1961 Senator Eastland of Mississippi pointed out that the Senate must take responsibility for having affirmed the appointment of an entire body of justices — not one of whom had any substantive experience as a judge prior to being appointed to the Supreme Court! From Chief Justice Earl Warren down to the last justice to ascend to the bench, not one had qualified himself with judicial experience.

It will be recalled that the Constitution provided a standard of qualifications for Congressmen, Senators, and the President, but nothing is said about the qualifications required for members of the Supreme Court.

Need for Corrective Measures When Abuses Occur

All of the above considerations bring us to a brief discussion of the responsibility weighing upon the American people to rectify a number of serious breaches in constitutional principles involving the federal judiciary.

To appreciate how far we have strayed, let us examine the words of a notable constitutional authority, Edwin S. Corwin, who wrote *The Constitution of the United States, Annotated,* an official government publication. He points out that the Supreme Court has passed through four identifiable stages of development, which may be summarized as follows:

1. There was the John Marshall period when the Constitution was used to establish "national supremacy." *The Federalist Papers* and the words of the Founders were almost the exclusive guide to constitutional interpretations during this first period.
2. The second period began with the appointment of Chief Justice Taney in 1835 and extended to approximately 1895. During this period the Supreme Court leaned heavily on various doctrines of constitutional theory and seldom quoted the Founders or *The Federalist Papers.* Nevertheless, the Court adhered rather strictly to the philosophy of the Founders, even though they seldom quoted them.
3. Beginning around 1895, the Supreme Court moved into a third phase by gradually replacing constitutional supremacy with JUDICIAL supremacy. The Constitution was no longer what the Founders said it was, but rather what the Supreme Court said it was. To quote Dr. Corwin:

"It was early in this period that Governor [Charles Evans] Hughes, soon to ascend the Bench [and later serve as Chief Justice from 1930 to 1941] said, without perhaps intending all that his words literally conveyed, 'We are under a Constitution, but the Constitution is what the judges say it is.' ... Senator Borah, in the Senate debate on Mr. Hughes' nomination for Chief Justice, in 1930, declared that the Supreme Court had become 'economic dictator in the United States.' Some of the Justices concurred in these observations, especially Justices Holmes and Brandeis. Asserted the latter, the Court had made itself 'a super-legislature' and Justice Holmes could discover 'hardly any limit but the sky to the power claimed by the Court to disallow State acts' which may happen to strike a majority [of its members] as for any reason undesirable."[18]

4. The final period is one which is continuing today. It is the spectacle of a judiciary virtually out of control and seriously in need of repair by a constitutional amendment. As Edwin Corwin writes:

"What was once vaunted as a Constitution of Rights, both State rights and private rights, has been replaced to a great extent by a Constitution of Powers. The Federal system has shifted base in the direction of a consolidated national power; within the National Government itself there has been an increased flow of power in the direction of the President; even judicial enforcement of the Bill of Rights has faltered at times, in the presence of national emergency."[19]

Time for a Constitutional Amendment?

The Founders anticipated the possibility that branches of the federal govern-

ment would warp their channels of authority, and Alexander Hamilton urged future generations to take action whenever this occurred. Said he:

"If the Federal Government should overpass the just bounds of its authority and make a tyrannical use of its powers, the PEOPLE, whose creature it is, must appeal to the standard they have formed [the Constitution], and take such measures to redress the injury to the Constitution as the exigency may suggest and prudence justify."[20]

Thomas Jefferson also suggested an amendment to the Constitution so that either Congress or the state legislatures (or both) might have a veto power or removal power over the Supreme Court, and thereby provide the people with a remedy when the court strayed from the Constitution. He wrote:

"There was another amendment of which none of us thought at the time [when the Constitution was framed], and in the omission of which lurks the germ that is to destroy this happy combination of national powers in the general government for matters of national concern, and independent powers in the states for what concerns the states severally....

The Supreme Court building in Washington, D.C.

"I deem it indispensable to the continuance of this government that they [the opinions of the Supreme Court] should be submitted to some practical and impartial control; and this, to be impartial, must be compounded of a mixture of state and federal authorities.... I do not charge the judges with willful and ill-intentioned error; but honest error must be arrested where its toleration leads to public ruin."[21]

A Quick Look Inside the U.S. Supreme Court Today

Let us now take a brief look at the internal operations of the nation's highest judicial organ, the Supreme Court of the United States.

The work assignment of the nine justices who serve on the Supreme Court is scheduled on the basis of two biweekly intervals. For the first interval of two weeks, the court listens to oral arguments, makes rulings on motions, and announces decisions on cases. The court then recesses for two weeks while the Justices cloister themselves in their private office suites. There they work with a cadre of law clerks chosen from among the top students of the nation's foremost law schools, reviewing, pondering, and evaluating the numerous petitions assigned to each justice for review, or writing opinions in cases already adjudicated. These alternating biweekly work patterns continue throughout the term of the court from October to late June.

Each Wednesday or Friday the Justices meet in a secret conference to perform one of their most important functions—deciding which cases will be accepted for review. The conference chamber is located next to the office of the Chief Justice, and the Associate Justices are assembled by a special buzzer. There must be a quo-

rum of six or more to do business. As they enter the room the Justices follow a ritual, initiated in 1888, of formally greeting and shaking hands with each other. No doubt this helps to soften the memory of vigorous polemics in former meetings and to ameliorate the occasional hostilities which erupt during the decision-making process on important cases. Clerks wheel in cartloads of law books to be used during the conference and then retire to leave the Justices alone.

As the conference opens, the Chief Justice begins the discussion, followed by the other Justices in order of seniority. The agenda includes only those cases which one or more of the Justices has submitted for consideration. At least four votes must be in favor of a case to get it accepted for review.

After this conference, the parties to each case which has been approved for review are asked to submit briefs—forty copies each. Sometimes their attorneys will be asked to appear before the full court and argue the case orally. This is a rare privilege, and only 5 percent of the cases receive this honor. The hearings are held in the somewhat awesome precincts of the vaulted-ceilinged courtroom. The court takes itself seriously and some of the proceedings are still cloaked in the ceremonial pomp which has been traditional since the court's first session in New York City in 1790.

Some of the lawyers—especially those representing the Solicitor General's office in the Department of Justice—appear before the court in formal striped trousers and tailcoats. On the counsel tables of the lawyers are crossed, goose-quill pens. Each of the Justices is still furnished with a highly polished brass spittoon—used, these days, merely as a wastebasket.

The Chief Justice sits in the center of the high bench with the senior Justice at his right, the next in seniority to his left, and so forth. The lawyers make their arguments from a lectern or directly in front of the high bench or platform where the Justices are seated. Each side is usually limited to half an hour to present its arguments, but a full hour is permitted in the more critical cases. The briefs of the attorneys will have been studied beforehand by the Justices, so the attorneys on each side are subject to many questions from the bench. Each lawyer must watch the lights on the lectern, which warn him how much time is left. A white light indicates there are five minutes remaining, and a red light flashes to indicate that the presentation must end.

After the oral argument, the Justices hand in their votes. At least five votes are needed for a party to win. If there is a vacancy or an abstention so that the vote is a tie (4 to 4), the lower court's ruling stands, but the case does *not* become a binding precedent to govern similar cases in the federal and state courts throughout the nation. This means that the issue raised by that case is still open-ended, even though it has been settled with finality for those particular parties.

Once the votes are handed in, a Justice must be assigned to write the official opinion. The Chief Justice will make the assignment personally if he is one of the majority, but if he does not agree with the decision in a particular case the senior Justice on the majority side will make the assignment. After a draft of the opinion is completed, copies are printed under the strictest security in the court's own print shop and then circulated among the Justices. Suggestions are made and a final draft is agreed upon. The dissenters may

wish to choose one of their members to present the reasons for their dissent. Justices may also write their own concurring or dissenting opinions if the views of the others do not coincide with what they feel should be said.

It is always a dramatic moment when the court announces from the bench its decision in a particular case. Such announcements are always made without any advance notice. From that moment on, the legal ruling laid down by the court in that particular case becomes the supreme law of the land whenever that same issue arises in the future.

Now let us return to the text of the Constitution where the Founders established the judiciary of the United States as a unique and innovative attempt to preserve human freedom and protect private rights.

---

1. Jacob M. Braude, *Life-Time Speaker's Encyclopedia*, 2 vols. (Englewood Cliffs, N.J.: Prentice Hall, 1962), 1:326.
2. Adler et al., *The Annals of America*, 4:65–66; emphasis added.
3. Kelly and Harbison, *The American Constitution*, p. 190.
4. *Federalist Papers*, No. 78.
5. Ibid.
6. Adler et al., *The Annals of America*, 3:261–64.
7. Bergh, 11:50.
8. Ibid., p. 213.
9. Ibid., 15:212.
10. Ibid., p. 277.
11. Samuel J. Konefsky, *John Marshall and Alexander Hamilton: Architects of the American Constitution* (New York: Macmillan Co., 1964), p. 81.
12. Bergh, 10:248.
13. Ibid., 15:449.
14. Ibid., 10:418.
15. 19 Howard 395.
16. *Story of the Constitution*, 2d ed. (1851), vol. 1, sec. 400.
17. Bergh, 15:330–32.
18. Corwin, *The Constitution and What It Means Today*, p. 23.
19. Ibid.
20. *Federalist Papers*, No. 33.
21. Bergh, 1:120.

The Supreme Court exists to administer final rulings on important cases.

CHAPTER

JURISDICTION OF THE FEDERAL COURTS

In the Articles of Confederation there had been no provision for a national judiciary. All through the Revolutionary War and the turbulent period which followed, there were numerous quarrels between the states and with foreign countries which called for a national judicial system where these disputes could be settled. Obviously, quarrels between states could not be settled in either of their courts, nor would the courts of a disinterested state have jurisdiction.

When the Founders undertook the task of setting up the federal judicial system, they were sensitive to the fact that there should be a clear division of labor between the cases assigned to the states and the cases which logically belong in the federal courts. They were also aware that in some instances the federal courts would act

under the authority of the Constitution to make decisions affecting every person in the United States.

It was a challenging task to engineer the new judicial system so that it would accommodate all of its assigned objectives.

PROVISION 165

From Article III.1

The judicial power of the United States shall be vested in one Supreme Court and such inferior courts as the Congress may from time to time establish.

This provision gives the American people the RIGHT to have a system of federal courts where their problems under federal jurisdiction can be adjudicated.

It will be noted that the size of the Supreme Court is not indicated, and down through the years the number of Justices has gone up and down like a political yo-yo. The first Congress passed an act designating a Chief Justice and five Associate Justices as the "Supreme Court." In 1801 the number of Associate Justices was reduced to four. In 1802 the number of Associates was boosted to six, then increased to eight in 1837. In 1861 the Chief Justice and nine Associates were designated, but in 1866 the Associate Justices were reduced to six in number. In 1869 the number was increased again to eight, where it remains today.

In 1937 President Franklin Roosevelt attempted to increase the number of Justices to fifteen so that he could get a court which would be sympathetic to many of his New Deal programs. This was rejected, but a bill was passed which allowed the Attorney General to appeal directly to the Supreme Court whenever the constitutionality of an act of Congress was involved.

The inferior courts were first called circuit courts, but by 1890 the Supreme Court was so overburdened that a "circuit court of appeals" was set up in each of the nine circuits of the United States. The name "circuit courts" was abolished for the inferior courts, and these were renamed the United States "district" courts.

Today there are eighty-three separate districts with a total of 144 courts, which try both civil and criminal cases. In 1855 a court of claims was created by Congress to hear cases against the United States inasmuch as a sovereign can be sued only with its consent. In 1909 a court of customs appeals was established to review decisions of the board of general appraisers on questions arising out of import duties. Special courts have also been set up to hear tax cases, but these function without juries and originated generically as part of the tax-collection machinery of the executive branch.

The Founders provided answers to the following questions raised during the debates:

- *What is the advantage of federal district courts in the states?*

District Courts Prevent the Supreme Court from Being Submerged by Appeals

Hamilton: "The power of constituting inferior courts is evidently calculated to obviate the necessity of having recourse to the Supreme Court in every case of federal cognizance. It is intended to enable the national government to institute or *authorize,* in each State or district of the United States, a tribunal competent to the determination of matters of national jurisdiction within its limits."[1]

District Court Decisions to Be Final in Most Cases

Madison: "Observed that unless inferior tribunals were dispersed throughout the republic with *final* jurisdiction in *many* cases, appeals would be multiplied to a most oppressive degree; that, besides, an appeal would not in many cases be a remedy. What was to be done after improper verdicts, in state tribunals, obtained under the biased directions of a dependent judge, or the local prejudices of an undirected jury? To remand the cause for a new trial would answer no purpose. To order a new trial at the supreme bar would oblige the parties to bring up their witnesses, though ever so distant from the seat of the court. An effective judiciary establishment commensurate to the legislative authority was essential. A government, without a proper executive and judiciary, would be the mere trunk of a body, without arms or legs to act or move."[2]

• *Will state cases be appealed to the federal courts?*

States to Have Separate Jurisdiction from Federal Courts

Spaight: "In that convention, the unanimous desire of all was to keep separate and distinct the objects of the jurisdiction of the federal from that of the state judiciary.... When any government is established, it ought to have power to enforce its laws, or else it might as well have no power. What but that is the use of a judiciary? ... As to the inconvenience of distant attendance, Congress has power of establishing inferior tribunals in each state, so as to accommodate every citizen."[3]

Two Judicial Systems

Pendleton: "I never conceived it to be a consolidated government, so as to involve the interest of all America. Of the two objects of judicial cognizance, one is general and national, and the other local. The former is given to the general judiciary, and the latter left for the local tribunals. They act in cooperation, to secure our liberty."[4]

In the constitutional judicial system, the states were to have jurisdiction that was separate from the federal courts.

PROVISION

166

From Article III.1

The judges of both the Supreme Court and the inferior courts shall hold their office during good behavior.

This provision gives the judges the RIGHT to serve for life so long as they serve with "good behavior."

One of the devices by which the kings of England kept the courts under their submission was controlling the compensation of the judges or summarily dismissing them if they issued decrees which were contrary to the desires of the Crown.

By giving judges a life tenure during "good behavior," the Constitution insured the independence of the judges, and by assuring the maintenance of their salaries, it removed them from the possibility of intimidation in case of unpopular decisions.

At first the salaries of the judges were immune even from taxation, but since 1919 the tax laws have included the compensation of all federal officers, including the judges. As of 1937 the Supreme Court Retirement Act gives Justices the privilege of retiring upon reaching the age of seventy, and a similar privilege prevails for the judges of the inferior courts.

Questions answered by the Founders in connection with this provision included the following:

- *How important is judicial independence?*

Judges Should Not Be Beholden to Other Branches of Government

Hamilton: "That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the executive or legislature there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity to justify a reliance that nothing would be consulted but the Constitution and the laws."[5]

Judicial Independence Must Be Protected During Good Behavior

Wilson: "The servile dependence of the judges, in some of the states that have neglected to make proper provision on this subject, endangers the liberty and property of the citizen; and I apprehend that, whenever it has happened that the appointment has been for a less period than during good behavior, this object has not been sufficiently secured; for if, every five or seven years, the judges are obliged to make court for their appointment to office, they cannot be styled independent. This is not the case with regard to those appointed under the general gov-

ernment; for the judges here shall hold their offices during good behavior."[6]

• *Then what is the remedy for misconduct?*

Impeachment Is the Remedy for Misconduct

Hamilton: "The precautions for their responsibility are comprised in the article respecting impeachments. They are liable to be impeached for malconduct by the House of Representatives and tried by the Senate; and, if convicted, may be dismissed from office and disqualified for holding any other. This is the only provision on the point which is consistent with the necessary independence of the judicial character....

"An attempt to fix the boundary between the regions of ability and inability would much oftener give scope to personal and party attachments and enmities than advance the interests of justice or the public good. The result, except in the case of insanity, must for the most part be arbitrary; and insanity, without any formal or express provision, may be safely pronounced to be a virtual disqualification."[7]

• *Is not judicial independence a dangerous innovation?*

A Modern American Improvement

Hamilton: "The standard of good behavior for the continuance in office of the judicial magistracy is certainly one of the most valuable of the modern improvements in the practice of government. In a republic it is [an] ... excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government to secure a steady, upright, and impartial administration of the laws....

"The judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors but holds the sword of the community. The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments....

"As, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its coordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice is peculiarly essential in a limited constitution."[8]

• *Could not a strong and independent judiciary become a threat?*

Courts Too Weak to Be a Threat

Hamilton: "Particular misconstructions and contraventions of the will of the legislature may now and then happen; but they can never be so extensive as to amount to an inconvenience, or in any sensible degree to affect the order of the political system. This may be inferred with certainty from the general nature of the judicial power, from the objects to which it relates, from the manner in

which it is exercised, from its comparative weakness, and from its total incapacity to support its usurpations by force. And the inference is greatly fortified by the consideration of the important constitutional check which the power of instituting impeachments in one part of the legislative body, and of determining upon them in the other, would give to that body upon the members of the judicial department. This is alone a complete security. There never can be danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the body entrusted with it, while this body was possessed of the means of punishing their presumption by degrading them from their stations."[9]

• *Why did Jefferson disagree with Hamilton on this point?*

Federal Courts Usurping Jurisdiction over States

Jefferson: "The great object of my fear is the federal judiciary. That body, like gravity, ever acting with noiseless foot and unalarming advance, gaining ground step by step and holding what it gains, is engulfing insidiously the [state] governments into the jaws of that which feeds them."[10]

As Jefferson was quoted earlier in saying:

"It has long . . . been my opinion, and I have never shrunk from its expression (although I do not choose to put it into a newspaper, nor like a Priam in armor [to] offer myself [as] its champion), that the germ of dissolution of our federal government is in the constitution of the federal judiciary; an irresponsible body (for impeachment is scarcely a scarecrow), working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief over the field of jurisdiction, until all shall be usurped from the states, and the government of all be consolidated into one. To this I am opposed, because when all government, domestic and foreign, in little as in great things, shall be drawn to Washington as the center of all power, it will render powerless the checks provided of one government on another, and will become as venal and oppressive as the government from which we separated. It will be as in Europe, where every man must be either pike or gudgeon, hammer or anvil. Our functionaries and theirs are wares from the same workshop, made of the same materials and by the same hand. If the states look with apathy on this silent descent of their government into the gulf which is to swallow all, we have only to weep over the human character formed uncontrollable but by a rod of iron, and the blasphemers of man, as incapable of self-government, become his true historians."[11]

Court Subverting the Constitution

Jefferson: "Our government is now taking so steady a course as to show by what road it will pass to destruction, to wit, by consolidation first, and then corruption, its necessary consequence. The engine of consolidation will be the federal judiciary; the two other branches the corrupting and corrupted instruments."[12]

"We already see the power, installed for life, responsible to no authority (for impeachment is not even a scarecrow), advancing with a noiseless and steady pace to the great object of consolidation. The foundations are already deeply laid by their decisions for the annihilation of constitutional state rights, and the removal of every check, every counterpoise to the

engulfing power of which themselves are to make a sovereign part. If ever this vast country is brought under a single government, it will be one of the most extensive corruption, indifferent and incapable of a wholesome care over so wide a spread of surface. This will not be borne, and you will have to choose between reformation and revolution. If I know the spirit of this country, the one or the other is inevitable. Before the canker is become inveterate, before its venom has reached so much of the body politic as to get beyond control, remedy should be applied."[13]

"There is no danger I apprehend so much as the consolidation of our government by the noiseless, and therefore unalarming, instrumentality of the Supreme Court. This is the form in which Federalism now arrays itself, and consolidation is the present principle of distinction between Republicans and the pseudo-Republicans but real Federalists."[14]

Courts Not Weak As Hamilton Had Thought

Jefferson: "At the establishment of our constitutions, the judiciary bodies were supposed to be the most helpless and harmless members of the government. Experience, however, soon showed in what way they were to become the most dangerous; that the insufficiency of the means provided for their removal gave them a freehold and irresponsibility in office; that their decisions, seeming to concern individual suitors only, pass silent and unheeded by the public at large; that these decisions nevertheless become law by precedent, sapping by little and little the foundations of the Constitution, and working its change by construction, before anyone has perceived that that invisible and helpless worm has been busily employed in consuming its substance. In truth, man is not made to be trusted for life if secured against all liability to account."[15]

"One single object, if your [proposed code of laws] attains it, will entitle you to the endless gratitude of society: that of restraining judges from usurping legislation. And with no body of men is this restraint more wanting than with the judges of what is commonly called our general government, but what I call our foreign department. They are practicing on the Constitution by inferences, analogies, and sophisms as they would on an ordinary law. They do not seem aware that it is not even a *Constitution*, formed by a single authority and subject to a single superintendence and control; but that it is a compact of many independent powers, every single one of which claims an equal right to understand it, and to require its observance.... They imagine they can lead us into a consolidate government, while their road leads directly to its dissolution. This member of the government was at first considered as the most harmless and helpless of all its organs. But it has proved that the power of declaring what the law is *ad libitum*, by sapping and mining, slyly, and without alarm, the foundations of the Constitution, can do what open force would not dare to attempt."[16]

Need of an Amendment to Curb the Courts

Jefferson: "There was another amendment of which none of us thought at the time [when the constitution was framed], and in the omission of which lurks the germ that is to destroy this happy combination of national powers in the general government for matters of national concern, and independent powers in the states for what concerns the states severally. In England, it was a great point gained at the Revolution that the commissions of the judges, which had hither-

to been during pleasure, should thenceforth be made during good behavior.

"A judiciary dependent on the will of the King had proved itself the most oppressive of all tools in the hands of that magistrate. Nothing, then, could be more salutary than a change there to the tenure of good behavior; and the question of good behavior left to the vote of a simple majority in the two houses of Parliament.

"Before the [American] Revolution we were all good English Whigs, cordial in their free principles and in their jealousies of their executive magistrate. These jealousies are very apparent in all our state constitutions; and in the general government in this instance, we have gone even beyond the English caution by requiring a vote of *two-thirds in one of the houses for removing a judge;* a vote so impossible, where any defense is made before men of ordinary prejudices and passions, that our judges are effectually independent of the nation. But this ought not to be. I would not, indeed, make time dependent on the executive authority, as they formerly were in England; but I deem it indispensable to the continuance of this government that they should be submitted to some practical and impartial control; and that this, to be impartial, must be compounded of a mixture of state and federal authorities.

"It is not enough that honest men are appointed judges. All know the influence of interest on the mind of man, and how unconsciously his judgment is warped by that influence. To this bias add that of the *esprit de corps,* of their peculiar maxim and creed that 'it is the office of a good judge to enlarge his jurisdiction,' and the absence of responsibility; and how can we expect impartial decision between the general government, of which they are themselves so eminent a part, and an individual state, from which they have nothing to hope or fear?

"We have seen, too, that, contrary to all correct example, they are in the habit of going out of the question before them to throw an anchor ahead and grapple further hold for future advances of power. They are, then, in fact, the corps of sappers and miners steadily working to undermine the independent rights of the states, and to consolidate all power in the hands of that government in which they have so important a freehold estate.... I repeat that I do not charge the judges with willful and ill-intentioned error; but honest error must be arrested where its toleration leads to public ruin. As, for the safety of society, we commit honest maniacs to bedlam, so judges should be withdrawn from their bench whose erroneous biases are leading us to dissolution. It may, indeed, injure them in fame or in fortune; but it saves the Republic, which is the first and supreme law."[17]

- *Are there other options?*

Limited Terms May Help

Jefferson: "Let the future appointments of judges be for four or six years, and renewable by the President and Senate. This will bring their conduct, at regular periods, under revision and probation, and may keep them in equipoise between the [federal] and [state] governments. We have erred in this point by copying England, where certainly it is a good thing to have the judges independent of the King. But we have omitted to copy their caution also, which makes a judge removable on the address of both legislative houses. That there should be public functionaries independent of the nation, whatever may be their demerit, is a solecism in a republic, of the first order of absurdity and inconsistency."[18]

PROVISION

167

From Article III.1

The judges, both of the Supreme Court and of the inferior courts, shall receive a designated compensation which shall not be diminished during their continuance in office.

This provision gives the judges the RIGHT to render decisions according to their own best judgment without fear of reprisal or a reduction in salary should these decisions displease the administration in power.

One of the most severe handicaps to the dispensing of evenhanded justice, from a judicial point of view, was the English custom of reducing the salaries of judges who displeased the king or his officers. This provision was designed to prevent this from happening in the United States.

Questions answered by the Founders in connection with this provision included the following:

- *Why is the compensation factor so important?*

Subsistence Can Control the Will Power of a Judge

Hamilton: "In the general course of human nature, *a power over a man's subsistence amounts to a power over his will.* And we can never hope to see realized in practice the complete separation of the judicial from the legislative power, in any system which leaves the former dependent for pecuniary resources on the occasional grants of the latter....

"It will readily be understood that the fluctuations in the value of money and in the state of society rendered a fixed rate of compensation in the Constitution inadmissible. What might be extravagant today might in half a century become penurious and inadequate. It was therefore necessary to leave it to the discretion of the legislature to vary its provisions in conformity to the variations in circumstances, yet under such restrictions as to put it out of the power of that body to change the condition of the individual for the worse. A man may then be sure of the ground upon which he stands, and can never be deterred from his duty by the apprehension of being placed in a less eligible situation."[19]

- *Would increases be permitted?*

Increases Yes, Decreases No

G. Morris: "He thought the legislature ought to be at liberty to increase salaries as circumstances might require; and that this would not create any improper dependence in the judges."[20]

Franklin: "Money may not only become plentier; but the business of the department may increase, as the country becomes more populous."[21]

G. Morris: "The value of money may not only alter, but the state of society may alter. In this event, the same quantity of wheat, the same value, would not be the same compensation. The amount of salaries must always be regulated by the manners and the style of living in a country...."

All the business of a certain description, whether more or less, must be done in that single tribunal. Additional labor alone in the judges can provide for additional business. Additional compensation, therefore, ought not to be prohibited."[22]

• *Why can compensation for judges be increased when compensation for the President cannot?*

The President's Situation Is Different from That of Judges

McKean: "An objection is made that the compensation for the services of the judges shall not be *diminished* during their continuance in office; and this is contrasted with the compensation of the President, which is to be neither *increased* nor *diminished* during the period for which he shall be elected. But that of the judges may be increased.

"Do gentlemen not see the reason why this difference is made? Do they not see that the President is appointed but for four years, whilst the judges may continue for life, if they shall so long behave themselves well? In the first case, little alteration can happen in the value of money; but in the course of a man's life, a very great one may take place from the discovery of silver and gold mines, and the great influx of those metals; in which case an increase of salary may be requisite. A security that their compensation shall not be lessened nor they have to look up to every session for salary, will certainly tend to make those officers more easy and independent."[23]

PROVISION 168

From Article III.2.1

The administration of this judicial power shall extend to all cases, both in law and in equity.

This provision gave the federal courts the RIGHT to handle all federal cases whether they involved principles of law or principles of equity.

Questions answered by the Founders during the debates on this provision included the following:

• *How broad is the jurisdiction of the federal courts?*

Jurisdiction of Federal Courts Is Strictly Limited

Hamilton: "The judicial authority of the federal judicatures is declared by the Constitution to comprehend certain cases particularly specified. The expression of these cases marks the precise limits beyond which the federal courts cannot extend their jurisdiction, because the objects of their cognizance being enumerated, the specification would be nugatory if it did not exclude all ideas of more extensive authority."[24]

Why Equity Is Included

Hamilton: "It has ... been asked, what need of the word 'equity'? ... There is hardly a subject of litigation between indi-

viduals which may not involve those ingredients of *fraud, accident, trust,* or *hardship,* which would render the matter an object of equitable rather than of legal jurisdiction, as the distinction is known and established in several of the states. It is the peculiar province, for instance, of a court of equity to relieve against what are called hard bargains: these are contracts in which, though there may have been no direct fraud or deceit sufficient to invalidate them in a court of law, yet there may have been some undue and unconscionable advantage taken of the necessities or misfortunes of one of the parties which a court of equity would not tolerate. In such cases, where foreigners were concerned on either side, it would be impossible for the federal judicatories to do justice without an equitable as well as a legal jurisdiction. Agreements to convey lands claimed under the grants of different States may afford another example of the necessity of an equitable jurisdiction in the federal courts."[25]

• *Why is the federal judiciary the watchman over possible excesses by the Congress?*

Federal Courts Act As Guardian of States' Rights

Hamilton: "The propriety of a law, in a constitutional light, must always be determined by the nature of the powers upon which it is founded. Suppose, by some forced constructions of its authority (which, indeed, cannot easily be imagined), the federal legislature should attempt to vary the law of descent in any State, would it not be evident that in making such an attempt it had exceeded its jurisdiction and infringed upon that of the State? Suppose, again, that upon the pretense of an interference with its revenues, it should undertake to abrogate a land tax imposed by the authority of a State; would it not be equally evident that this was an invasion of that concurrent jurisdiction in respect to this species of tax, which its Constitution plainly supposes to exist in the state governments?"[26]

Congress Not Like Parliament with Unlimited Power

Hamilton: "By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing....

"There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid.

"If it be said that the legislative body are themselves the constitutional judges of their own powers and that the construction they put upon them is conclusive upon the other departments it may be answered that this cannot be the natural presumption where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be

supposed that the Constitution could intend to enable the representatives of the people to substitute their *will* to that of their constituents. It is far more rational to suppose that the courts were designed to be an intermediate body between the people and the legislature in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

"Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both, and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws rather than by those which are not fundamental."[27]

• *How do we prevent the law from becoming a mass of confusion?*

Increasing Volume of Laws Requires Highly Competent Judges

Hamilton: "To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind that the records of those precedents must unavoidably swell to a very considerable bulk and must demand long and laborious study to acquire a competent knowledge of them. Hence it is that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge."[28]

• *What if people agitate for unconstitutional decisions?*

People and State Legislatures Must Support Constitutional Law

Hamilton: "Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge of their sentiments, can warrant their representatives in a departure from it prior to such an act. But it is easy to see that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community."[29]

• *What if the courts do not agree with an act or a policy?*

The Courts Cannot Substitute Their Own Will for That of the Legislature

Hamilton: "It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature.... The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body."[30]

No Legislative Power in Courts to Make New Law

Strong: "The power of making ought to be kept distinct from that of expounding the laws. No maxim was better established."[31]

Gorham: "As judges they are not to be presumed to possess any peculiar knowledge of the mere policy of public measures."[32]

Judges Not to Set Policies

Gerry: "It was quite foreign from the nature of the office to make them judges of the policy of public measures."[33]

King: "The judges ought to be able to expound the law as it should come before them, free from the bias of having participated in its formation."[34]

Gorham: "Judges ought to carry into the exposition of the laws no prepossessions with regard to them."[35]

Gerry: "The judiciary... will have a sufficient check against encroachments of their own department by their exposition of the laws, which involved a power of deciding on their constitutionality."[36]

• *Then what is the power of the court?*

The Court Has the Power of Veto

L. Martin: "And as to the constitutionality of laws, that point will come before the judges in their official character. In this character they have a negative on the laws."[37]

Mason: "In their expository capacity of judges ... they could impede, in one case only, the operation of laws. They could declare an unconstitutional law void."[38]

PROVISION

169

From Article III.2.1

The federal courts shall have jurisdiction over any question concerning the Constitution of the United States.

This gives the people the RIGHT to take any case involving a constitutional question directly to the federal courts.

Even though the Founders emphasized that the jurisdiction of the state courts was to be kept entirely separate from that of the federal courts, if a constitutional question is raised during the litigation of a state case, the matter can be immediately referred to the federal courts for a decision.

One question answered by the Found-

ers in connection with this provision was as follows:

• *Why must constitutional questions always be referred to a federal court?*

The Federal Judiciary Is the Exclusive Guardian of the Constitution

Hamilton: "It seems scarcely to admit of controversy that the judiciary authority of the Union ought to extend ... to all [cases] which concern the execution of the provisions expressly contained in the articles of Union.... There ought always to be a constitutional method of giving efficacy to constitutional provisions. What, for instance, would avail restrictions on the authority of the State legislatures, without some constitutional mode of enforcing the observance of them? ... The imposition of duties on imported articles and the emission of paper money are specimens."[39]

Laws Must Conform to the Constitution

Hamilton: "The Constitution ought to be the standard of construction for the laws, and that wherever there is an evident opposition, the laws ought to give place to the Constitution.

"This doctrine is ... deducible ... from the general theory of a limited Constitution."[40]

PROVISION

170

From Article III.2.1

The federal courts shall have jurisdiction over any question arising under the laws of the United States.

This provision gives the people of the United States the RIGHT to appeal to the federal courts whenever a case involves the interpretation or enforcement of a law of the United States.

In many cases there are crimes or other situations where the federal government and the state have joint jurisdiction. These cases frequently have to be referred to the federal courts to determine whether the defendant comes under a law of the United States. If so, the federal courts have jurisdiction.

Some of the questions connected with this provision were answered by the Founders during the debates.

• *When federal officers are resisted, to whom shall they look for a remedy?*

Federal Officers Must Be Sustained by the Courts

Pendleton: "Must not the judicial powers extend to enforce the federal laws, govern its own officers, and confine them to the line of their duty? Must it not protect them, in the proper exercise of duty, against all opposition, whether from individuals or state laws?"[41]

• *Why is it important to have the federal courts handle all questions connected with federal laws?*

There Must Be Uniformity of Interpretation

Hamilton: "If there are such things as political axioms, the propriety of the judicial power of a government being coextensive with its legislative may be ranked among the number. The mere necessity of uniformity in the interpretation of the national laws decides the question."[42]

• *In cases of infringement of the Constitution, to whom should the people look for a remedy?*

Unconstitutional Laws to Be Declared Void

Marshall: "With respect to [the federal courts'] cognizance in all cases arising under the Constitution and the laws of the United States,...the laws of the United States being paramount to the laws of the particular states, there is no case but what [federal jurisdiction] will extend to. Has the government of the United States power to make laws on every subject?... Can they go beyond the delegated powers? If they were to make a law not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the Constitution which they are to guard. They would not consider such a law as coming under their jurisdiction. They would declare it void."[43]

Wilson: "If a law should be made inconsistent with those powers vested by this instrument in Congress, the judges, as a consequence of their independence, and the particular powers of government being defined, will declare such law to be null and void; for the power of the Constitution predominates. Any thing, therefore, that shall be enacted by Congress contrary thereto, will not have the force of law."[44]

S. Adams: "If any law made by the federal government shall be extended beyond the power granted by the proposed Constitution,...it will be an error, and adjudged by the courts of law to be void."[45]

• *What is the federal courts' frame of reference in reviewing the validity of state statutes and acts of Congress?*

Constitutional Limitations Determine Validity of Federal and State Laws

Ellsworth: "This Constitution defines the extent of the powers of the general government. If the general legislature should at any time overleap their limits, the judicial department is a constitutional check. If the United States go beyond their powers, if they make a law which the Constitution does not authorize, it is void; and the judicial power, the national judges, who, to secure their impartiality, are to be made independent, will declare it to be void. On the other hand, if the states go beyond their limits, if they make a law which is a usurpation upon the general government, the law is void; and upright, independent judges will declare it to be so."[46]

• *Do all countries have a system of judicial review?*

Judicial Review an American Innovation

Madison: "The first class of cases to which its jurisdiction extends are those which may arise under the Constitution; and this is to extend to equity as well as law. It may be a misfortune that, in organizing any government, the explication of its authority should be left to any of its coordinate branches. There is no example in any country where it is otherwise.

There is a new policy in submitting it to the judiciary of the United States. That causes of a federal nature will arise, will be obvious to every gentleman who will recollect that the states are laid under restrictions, and that the rights of the Union are secured by these restrictions. They may involve equitable as well as legal controversies. With respect to the laws of the Union, it is so necessary and expedient that the judicial power should correspond with the legislative, that it has not been objected to."[47]

PROVISION

171

From Article III.2.1

The federal courts shall have jurisdiction over any question arising under the treaties or agreements made by authorities or officers of the United States.

This provision gives a person the RIGHT to be heard in a federal court if there is a question concerning the application of any treaty or agreement made by officers of the United States government with a foreign power.

Several vital questions arose concerning the application of this provision. Here are some of the more important responses made during the debates.

• *Why should the federal courts be the only tribunal where questions involving treaties and foreign agreements can be heard?*

Federal Jurisdiction Must Be Exclusive in These Cases

Madison: "With respect to treaties, there is a peculiar propriety in the judiciary's expounding them.

"These may involve us in controversies with foreign nations. It is necessary, therefore, that they should be determined in the courts of the general government. There are strong reasons why there should be a Supreme Court to decide such disputes. If, in any case, uniformity be necessary, it must be in the exposition of treaties. The establishment of one revisionary superintending power can alone secure such uniformity. The same principles hold with respect to cases affecting ambassadors and foreign ministers. To the same principles may also be referred their cognizance in admiralty and maritime cases. As our intercourse with foreign nations will be affected by decisions of this kind, they ought to be uniform. This can only be done by giving the federal judiciary exclusive jurisdiction. Controversies affecting the interest of the United States ought to be determined by their own judiciary, and not be left to partial, local tribunals."[48]

• *Have some of the states violated treaties?*

States Have Been Serious Violators in the Past

Wilson: "But it is highly proper that this regulation should be made; for the truth

is—and I am sorry to say it—that, in order to prevent the payment of British debts, and from other causes, our treaties have been violated, and violated, too, by the express laws of several states in the Union. Pennsylvania—to her honor be it spoken—has hitherto done no act of this kind; but it is acknowledged on all sides, that many states in the Union have infringed the treaty; and it is well known that, when the minister of the United States made a demand of Lord Carmarthen of a surrender of the western posts, he told the minister, with truth and justice, 'The treaty under which you claim those possessions has not been performed on your part; until that is done, those possessions will not be delivered up.' This clause, sir, will show the world that we make the faith of treaties a constitutional part of the character of the United States; that we secure its performance no longer nominally, for the judges of the United States will be enabled to carry it into effect, let the legislatures of the different states do what they may."[49]

• *What is the remedy for differing interpretations by the states?*

Federal Jurisdiction Provides Uniform Interpretation of Treaties

Hamilton: "Laws are a dead letter without courts to expound and define their true meaning and operation. The treaties of the United States, to have any force at all, must be considered as part of the law of the land. Their true import, as far as respects individuals, must, like all other laws, be ascertained by judicial determinations. To produce uniformity in these determinations, they ought to be submitted, in the last resort, to one SUPREME TRIBUNAL. And this tribunal ought to be instituted under the same authority which forms the treaties themselves. These ingredients are both indispensable. If there is in each State a court of final jurisdiction, there may be as many different final determinations on the same point as there are courts. There are endless diversities in the opinions of men. We often see not only different courts but the judges of the same courts differing from each other. To avoid the confusion which would unavoidably result from the contradictory decisions of a number of independent judicatories, all nations have found it necessary to establish one court paramount to the rest, possessing a general superintendence and authorized to settle and declare in the last resort a uniform rule of civil justice.

"This is the more necessary where the frame of the government is so compounded that the laws of the whole are in danger of being contravened by the laws of the parts. In this case, if the particular tribunals are invested with a right of ultimate jurisdiction, besides the contradictions to be expected from the differences of opinion there will be much to fear from the bias of local views and prejudices and from the interference of local regulations. As often as such an interference was to happen, there would be reason to apprehend that the provisions of the particular laws might be preferred to those of the general laws; from the difference with which men in office naturally look up to that authority to which they owe their official existence."[50]

PROVISION

172

From Article III.2.1

The jurisdiction of the federal courts shall extend to all cases affecting ambassadors, public ministers, or consuls of foreign nations.

This provision gives any high official of a foreign government the RIGHT to have direct access to the federal courts to adjudicate any cases in which these individuals might become involved.

One of the most delicate relationships with foreign powers is the occasion when their ambassadors or various ministers become entangled in some irregularity or violation of the laws of the host state. The diplomatic corps of any nation has always received the most courteous consideration on the highest levels of government in order to avoid any misunderstanding or strain between the two nations.

Experience has vindicated the Founders' wisdom in setting up this procedure.

PROVISION

173

From Article III.2.1

The jurisdiction of the federal courts shall cover all cases of admiralty and maritime jurisdiction.

Because maritime and admiralty cases relate to problems lying outside the normal jurisdiction of a state, this provision gives litigants the RIGHT to have their case heard in a federal court.

Comments of the Founders during the debates included the following:

Unique Quality of Maritime Cases

Hamilton: "The judiciary authority of the Union ought to extend ... to all [cases] which originate on the high seas, and are of admiralty or maritime jurisdiction.... Maritime causes ... so generally depend on the laws of nations and so commonly affect the rights of foreigners that they fall within the considerations which are relative to the public peace."[51]

Exclusive Jurisdiction in Federal Courts

Wilson: "He said the admiralty jurisdiction ought to be given wholly to the national government, as it related to cases not within the jurisdiction of particular states, and to a scene in which controversies with foreigners would be most likely to happen."[52]

PROVISION

174

From Article III.2.1

The jurisdiction of the federal courts shall apply to all cases in which the United States shall be a party.

Because the United States government is the highest level of legal authority in the Union, it is only appropriate that any issue in which it is a party should be adjudicated as a matter of RIGHT in the highest available tribunals of the nation.

The thoughts of the Founders underlying this particular provision are reflected in the following comments:

National Questions Should Be Settled in a National Tribunal

Hamilton: "Controversies between the nation and its members or citizens can only be properly referred to the national tribunals."[53]

Is This Destructive to the Rights of the States?

Wilson: "The universal practice of all nations has, and unavoidably must have, admitted of this power. But, say the gentlemen, the sovereignty of the states is destroyed, if they should be engaged in a controversy with the United States, because a suitor in a court must acknowledge the jurisdiction of that court, and it is not the custom of sovereigns to suffer their names to be made use of in this manner. The answer is plain and easy: the government of each state ought to be subordinate to the government of the United States."[54]

Highest Tribunal May Prevent Resorting to the Sword

Madison: "In controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide is to be established under the general government.... The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact; and that it ought to be established under the general rather than under the local governments, or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated."[55]

The bench of the Supreme Court of the United States.

PROVISION

175

From Article III.2.1

The jurisdiction of the federal courts shall apply to any controversies between two or more states.

When two states are in disagreement, they are not likely to accept a decision from either of their courts. It was therefore this provision which gave them the RIGHT to take the case before a federal court with no vested interest in the outcome.

Little discussion was required to justify the necessity of this provision. The basic principles involved are reflected in the following brief comments:

Only the Federal Courts Can Logically Handle This Type of Case

Pendleton: "The impossibility of calling a sovereign state before the jurisdiction of another sovereign state, shows the propriety and necessity of vesting this tribunal with the decision of controversies to which a state shall be a party."[56]

Marshall: "In controversies between a state and a foreign [or sister] state . . . the previous consent of the parties is necessary; and, as the federal judiciary will decide, each party will acquiesce."[57]

Important to Promote Harmony Between the States

Hamilton: "The power of determining causes between two States, between one State and the citizens of another, and between the citizens of different States, is perhaps not less essential to the peace of the Union. . . . Whatever practices may have a tendency to disturb the harmony between the States are proper objects of federal superintendence and control."[58]

PROVISION

176

From Article III.2.1

The jurisdiction of the federal courts shall apply to controversies arising between a state and the citizens of another state. (This provision was repealed by the Eleventh Amendment.)

This provision, which gave a citizen of one state the RIGHT to sue another state in federal court, created a storm of protest during the debates because traditionally no state can be sued without its consent. This allowed any ordinary citizen with a complaint against another state to have it hauled into federal court without its consent.

As we shall see when we discuss the Eleventh Amendment, it took only one instance where this provision was put

into effect to fire up the anger of enough states to get this provision eliminated. The following comments made during the various conventions demonstrate the profound concern which many felt and which turned out to be valid.

A State Should Not Be Hauled into Court by a Private Citizen

Marshall: "With respect to disputes between *a state and the citizens of another state*...I hope that no gentleman will think that a state will be called at the bar of the federal court.... It is not rational to suppose that the sovereign power should be dragged before a court. The intent is, to enable states to recover claims of individuals residing in other states."[59]

Satisfactory When a State Sues but Not When a Citizen Sues

Madison: "Its jurisdiction in controversies between a state and citizens of another state is much objected to, and perhaps not without reason. It is not in the power of individuals to call any state into court. The only operation it can have, is that, if a state should wish to bring a suit against a citizen of another state, it must be brought before the federal court. This will give satisfaction to individuals, as it will prevent citizens, on whom a state may have a claim, being dissatisfied with the state courts.

"It appears to me that this can have no operation but this—to give a citizen a right to be heard in the federal courts; and if a state should condescend to be a party, this court may take cognizance of it.

"As to its cognizance of disputes between citizens of different states...it may happen that a strong prejudice may arise, in some states, against the citizens of others, who may have claims against them. We know what tardy, and even defective, administration of justice has happened in some states. A citizen of another state might not chance to get justice in a state court, and at all events he might think himself injured."[60]

A Sovereign State Cannot Be Sued Without Its Consent

Hamilton: "It is inherent in the nature of sovereignty not to be amenable to the suit of an individual *without its consent*. This is the general sense and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union. Unless, therefore, there is a surrender of this immunity in the plan of the convention, it will remain with the States and the danger intimated must be merely ideal.... There is no color to pretend that the State governments would, by the adoption of that plan, be divested of the privilege of paying their own debts in their own way, free from every constraint but that which flows from the obligations of good faith. The contracts between a nation and individuals are only binding on the conscience of the sovereign, and have no pretensions to a compulsive force. They confer no right of action independent of the sovereign will. To what purpose would it be to authorize suits against States for the debts they owe? How could recoveries be enforced? It is evident, it could not be done without waging war against the contracting State: and to ascribe to the federal courts...a power which would involve such a consequence, would be altogether forced and unwarrantable."[61]

PROVISION

177

From Article III.2.1

The jurisdiction of the federal courts shall apply to controversies between citizens of different states.

This provision was designed to give citizens of different states the RIGHT to have their litigation adjudicated in a neutral court on the federal level.

One of the greatest deficiencies under the Articles of Confederation was the lack of a federal judiciary to handle problems of this type. When citizens of different states had a matter to be adjudicated, neither felt he could get a fair trial anywhere but in his own state, and thus the matter could not be satisfactorily settled.

This provision was designed to give both parties a neutral arena in which their case could be heard without local prejudice.

PROVISION

178

From Article III.2.1

The jurisdiction of the federal courts shall apply to citizens of the same state over controversies involving lands or grants in different states.

This provision was designed to give citizens of the same state the RIGHT to adjudicate their controversy in a neutral federal court when it involved lands or grants in states other than their own.

When this provision was discussed in the debates there was great concern that this measure would deprive the states of their legitimate jurisdiction over the affairs of their own citizens.

Answers to a variety of questions were provided in the following quotations:

- *What is the advantage in having these cases assigned to a federal court?*

Federal Jurisdiction Gives Both Parties an Impartial Hearing

Hamilton: "To all those in which the State tribunals cannot be supposed to be impartial and unbiased. No man ought certainly to be a judge in his own cause, or in any cause in respect to which he has the least interest or bias. This principle has no inconsiderable weight in designating the federal courts as the proper tribunals for the determination of controversies between different States and their citizens. And it ought to have the same operation in regard to some cases between citizens of the same State. Claims to land

under grants of different States, founded upon adverse pretensions of boundary, are of this description."[62]

• *Does this give the federal government the power to meddle with the internal affairs of the states?*

This Provision Does Not Affect the Internal Affairs of the State

W. Davie: "There is not one instance of a power given to the United States, whereby the internal policy or administration of the states is affected. There is no instance that can be pointed out wherein the internal policy of the state can be affected by the judiciary of the United States."[63]

• *Could this provision constitute a threat to states' rights?*

This Clause Takes Nothing from the States

Wilson: "Permit me to make one more remark on the subject of the judicial department. Its objects are extended *beyond* the bounds or power of every particular state, and therefore must be proper objects of the general government. I do not recollect any instance where a case can come before the judiciary of the United States, that could possibly be determined by a particular state, except one—which is, where citizens of the same state claim lands under the grant of different states; and in that instance, the power of the two states necessarily comes in competition; wherefore there would be great impropriety in having it determined by either."[64]

• *Why not settle the matter in the courts of the state where both citizens are residents?*

Such Disputes Involve the Interests of Two States

Marshall: "Are not controversies respecting lands claimed under the grants of different states the only controversies between citizens of the same state which the federal judiciary can take cognizance of? ... The state courts will not lose the jurisdiction of the causes they now decide."[65]

PROVISION

179

From Article III.2.1

The federal courts shall have jurisdiction over controversies between a state or the citizens thereof and any foreign state or the subjects thereof.

This provision gives the parties the RIGHT to have their case heard in the highest courts of the land—courts not identified with any particular state or group of individuals.

After the Revolutionary War there were claims and counter-claims in vast numbers between Americans and foreign litigants and the agents of foreign nations. The great problem in all of these

cases was finding a tribunal in which the parties were willing to have their claims litigated.

In this provision, the United States was making available to both its own citizens and foreign complainants the highest tribunals of the land—courts which represented the juridical forum of the nation rather than one of its parts, such as a state.

In the following statement, Alexander Hamilton emphasizes that the United States has a genuine interest in seeing that justice is provided both for our American complainants and for foreigners who have a just cause against Americans. Here is what he said:

"The judiciary authority of the Union ought to extend... to all [cases] which involve the peace of the confederacy, whether they relate to the intercourse between the United States and foreign nations or to that between the States themselves.... The peace of the whole ought not to be left at the disposal of a part. The Union will undoubtedly be answerable to foreign powers for the conduct of its members. And the responsibility for an injury ought ever to be accompanied with the faculty of preventing it. As the denial or perversion of justice by the sentences of courts... is with reason classed among the just causes of war, it will follow that the federal judiciary ought to have cognizance of all causes in which the citizens of other countries are concerned."[66]

• *In this provision, why is there a distinction between a "citizen" and a "subject"?*

MacLaine: "If there should be a controversy between this state and the king of France or Spain, it must be decided in the federal court. Or if there should arise a controversy between the French king, or any other foreign power, or one of their subjects or citizens, and one of our citizens, it must be decided there also. The distinction between the words *citizen* and *subject* was explained—that the former related to individuals of popular governments, the latter to those of monarchies; as, for instance, a dispute between this state, or a citizen of it, and a person in Holland. The words *foreign citizen* would properly refer to such persons. If the dispute was between this state and a person in France or Spain, the words *foreign subject* would apply to this; and all such controversies might be decided in the federal court—that the words *citizens* or *subjects*, in that part of the clause, could only apply to foreign citizens or foreign subjects; and another part of the Constitution made this plain, by confining disputes, in general, between citizens of the same state, to the single case of their claiming lands under grants of different states."[67]

The foundation of the American judicial system is the trial by jury. The Founders considered it so important that they mentioned it in Article 3, then reemphasized it in the Bill of Rights.

PROVISION

180

From Article III.2.2

In all cases affecting ambassadors, public ministers, and consuls, the Supreme Court shall have original jurisdiction.

Because of the delicate relationships with foreign powers, this provision gives any top diplomatic officer the RIGHT to have immediate access to the highest tribunal in the land in order to settle any legal problem.

The traditional protocol between nations has always allowed a diplomat representing the ruler or leaders of a sovereign nation to deal with the top leaders of the host nation. The same principle applies where an ambassador or minister of a foreign country has become entangled in some legal problem which might affect the relationship between the United States and the country he represents. Alexander Hamilton gave the following explanation:

"Public ministers of every class are the immediate representatives of their sovereigns. All questions in which they are concerned are so directly connected with the public peace, that, as well for the preservation of this as out of respect to the sovereignties they represent, it is both expedient and proper that such questions should be submitted in the first instance to the highest judicatory of the nation. Though consuls have not in strictness a diplomatic character, yet, as they are the public agents of the nations to which they belong, the same observation is in a great measure applicable to them."[68]

PROVISION

181

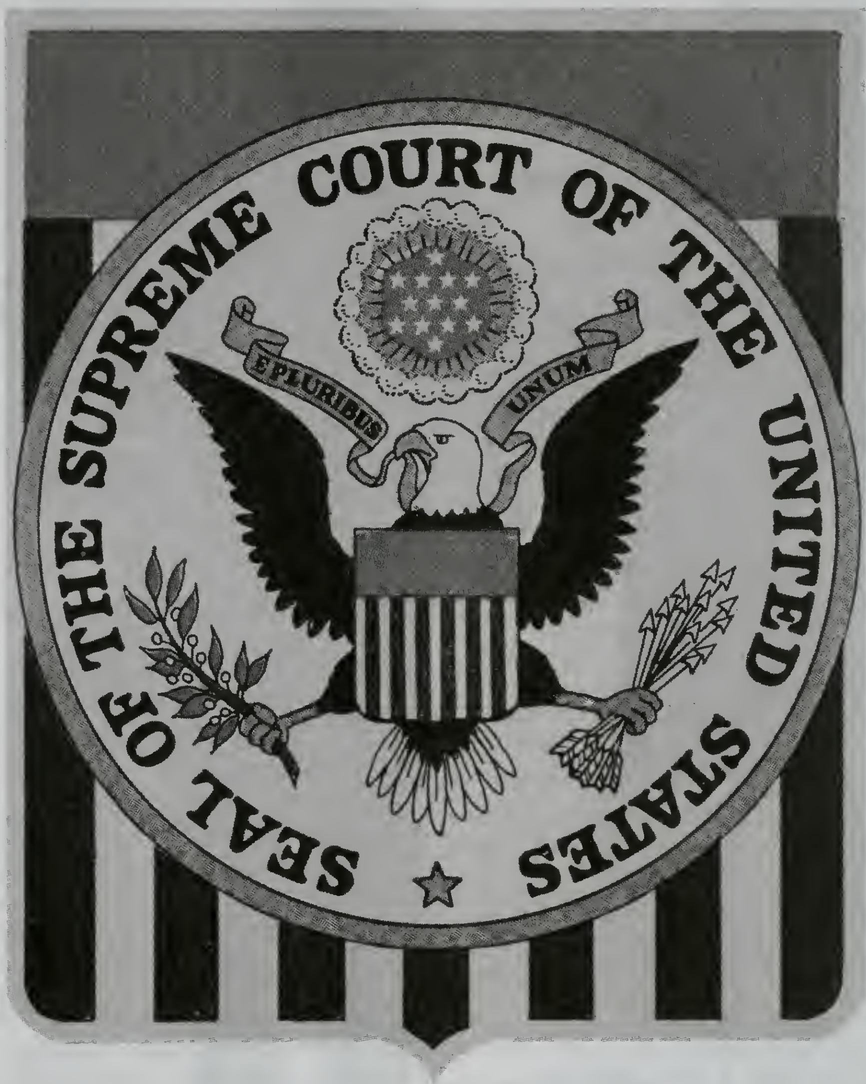
From Article III.2.2

In all cases in which a state shall be a party, the Supreme Court shall have original jurisdiction.

When a sovereign and independent state is a party to a federal case, it is essential that it have the RIGHT to be heard in the highest court in the land.

This provision was in deference to the anxieties of the states that the federal judiciary would treat the states as subordinate departments of the general government. This provision was to emphasize that the federal government would always be fully cognizant of the sovereign entity represented in each state of the Union. As Alexander Hamilton put it: "In cases in which a state might happen to be a party, it would ill suit its dignity to be turned over to an inferior tribunal."[69]

1. *Federalist Papers,* No. 81.
2. Madison, pp. 60–61.
3. Elliot, 4:139–40.
4. Ibid., 3:548.
5. *Federalist Papers,* No. 78.
6. Elliot, 2:480.
7. *Federalist Papers,* No. 79.
8. Ibid., No. 78.
9. Ibid., No. 81.
10. Ford, 10:189.
11. Bergh, 15:331.
12. Ibid., p. 341.
13. Ibid., p. 355.
14. Ibid., p. 421.
15. Ibid., p. 486.
16. Ibid., 16:113.
17. Ibid., 1:120.
18. Ibid., 15:389.
19. *Federalist Papers,* No. 79.
20. Madison, p. 277.
21. Ibid., pp. 277–78.
22. Ibid., p. 278.
23. Elliot, 2:539.
24. *Federalist Papers,* No. 83.
25. Ibid., No. 80.
26. Ibid., No. 33.
27. Ibid., No. 78.
28. Ibid.
29. Ibid.
30. Ibid.
31. Madison, p. 296.
32. Ibid., p. 295.
33. Ibid., p. 51.
34. Ibid.
35. Ibid., p. 300.
36. Ibid., p. 51.
37. Ibid., p. 297.
38. Ibid., p. 299.
39. *Federalist Papers,* No. 80.
40. Ibid., No. 81.
41. Elliot, 3:548.
42. *Federalist Papers,* No. 80.
43. Elliot, 3:553–54.
44. Ibid., 2:489.
45. Ibid., p. 131.
46. Ibid., p. 196.
47. Ibid., 3:352.
48. Ibid.
49. Ibid., 2:490.
50. *Federalist Papers,* No. 22.
51. Ibid., No. 80.
52. Madison, p. 61.
53. *Federalist Papers,* No. 80.
54. Elliot, 2:490.
55. *Federalist Papers,* No. 39.
56. Elliot, 3:549.
57. Ibid., p. 557.
58. *Federalist Papers,* No. 80.
59. Elliot, 3:555.
60. Ibid., p. 533.
61. *Federalist Papers,* No. 81.
62. Ibid., No. 80.
63. Elliot, 4:160.
64. Ibid., 2:481.
65. Ibid., 3:554.
66. *Federalist Papers,* No. 80.
67. Elliot, 4:175.
68. *Federalist Papers,* No. 81.
69. Ibid.


SEAL OF THE SUPREME COURT OF THE UNITED STATES
E PLURIBUS UNUM

80C

APPELLATE POWERS, THE COMMON LAW JURY, AND TREASON

Although several thousand cases are appealed to the Supreme Court each year, the court reviews only a small portion of them. It was never the intention of the Founders to have the Supreme Court burdened with the volume of cases which now overload it. Gradually, however, the court has interpreted acts of Congress as well as the text of the Constitution so as to give the federal government vastly expanded areas of jurisdiction. This accounts for many of the cases that flow to the Supreme Court each year.

In this chapter we will discuss the appellate powers of the Supreme Court, the common law jury system, and the crime of treason. The common law jury provided a major defense against abusive laws and obstreperous bureaucrats until around 1895, when the Supreme Court cut the jury's power in half.

Treason is the only criminal violation which is spelled out in the text of the Constitution. There have always been so many abuses of treason that the Founders felt it should be carefully defined, limited in scope, and cast in concrete by being made part of the national charter of freedom.

PROVISION 182

From Article III.2.2

The Supreme Court shall have appellate jurisdiction in all cases arising under the Constitution or the federal laws and treaties, as to both law and fact, with such exceptions and under such regulations as the Congress shall make.

This provision gives the Congress the RIGHT to limit the appellate jurisdiction of the Supreme Court on any subject not previously allocated to it as a matter of primary jurisdiction by the Constitution.

This provision was not designed to give Congress the power to limit the jurisdiction of the federal courts, but simply to make decisions on many topics conclusive after a hearing in the lower courts. It was the purpose of the Founders to protect the Supreme Court from being submerged by a mountain of trivial cases when it should be concentrating its attention on matters of national importance.

Interestingly enough, there are those who are anxious to increase the jurisdiction of the federal courts and allow them to take over many areas of responsibility presently allocated to the state courts. The Equal Rights Amendment is an example of this trend. (This explains why so many who wanted to support equal rights for women were opposed to the amendment because it transferred a vast new area of jurisdiction from the states to the federal courts.)

During the constitutional debates questions were raised concerning the appellate power of the Supreme Court and the manner in which it should be handled. Here are some of them.

- *Why would the Congress want to limit the appellate jurisdiction of the Supreme Court?*

Perpetual Appeals Can Often Ruin the Finances of a Litigant

Pendleton: "Congress can prevent that dreadful oppression which would enable many men to have a trial in the federal court, which is ruinous. There is a power which may be considered as a great security. The power of making what regulations and exceptions in appeals they may think proper may be so contrived as to render appeals, as to law and fact, proper, and perfectly inoffensive."[1]

- *What guidelines should the Congress use in making exceptions to the appellate jurisdiction of the Supreme Court?*

Advantage to the Litigants Should Determine Limits on Appellate Jurisdiction

Hamilton: "The particular powers of the federal judiciary, as marked out in the Constitution . . . are all conformable to the principles which ought to have governed the structure of that department and which are necessary to the perfection of the system. If some partial inconveniences should appear to be connected with the incorporation of any of them into the plan, it ought to be recollected that the national legislature will have ample authority to make such *exceptions* and to prescribe such regulations as will be calculated to obviate or remove these inconveniences. The possibility of particular mischiefs can never be viewed, by a well-informed mind, as a solid objection to a general principle which is calculated to avoid general mischiefs and to obtain general advantages."[2]

• *Could this provision affect state cases when there is concurrent jurisdiction with the federal courts?*

The Congress Could Not Deprive a State of Its Right of Appeal

Hamilton: "The States will retain all *pre-existing* authorities which may not be exclusively delegated to the federal head. . . . This exclusive delegation can only exist in one of three cases: where an exclusive authority is, in express terms, granted to the Union; or where a particular authority is granted to the Union and the exercise of a like authority is prohibited to the States; or where an authority is granted to the Union with which a similar authority in the States would be utterly incompatible. . . .

"When . . . we consider the State governments and the national government, as they truly are, in the light of kindred systems, and as parts of ONE WHOLE, the inference seems to be conclusive that the State courts would have a concurrent jurisdiction in all cases arising under the laws of the Union where it was not expressly prohibited.

"Here another question occurs: What relation would subsist between the national and State courts in these instances of concurrent jurisdiction? I answer that an appeal would certainly lie from the latter to the Supreme Court of the United States. The Constitution in direct terms gives an appellate jurisdiction to the Supreme Court in all the enumerated cases of federal cognizance in which it is not to have an original one, without a single expression to confine its operation to the inferior federal courts. The objects of appeal, not the tribunals from which it is to be made, are alone contemplated. From this circumstance, and from the reason of the thing, it ought to be construed to extend to the State tribunals . . . and appeals, in most cases in which they may be deemed proper, *instead of being carried to the Supreme Court may be made to lie from the State courts to district courts of the Union.*"[3]

• *Would a congressional limitation on the appellate jurisdiction of the Supreme Court apply to both law and fact?*

The Congress Can Make Comprehensive Restrictions

Marshall: "What is the meaning of the term *exception?* Does it not mean an alteration and diminution? Congress is empowered to make exceptions to the appellate jurisdiction, as to law and fact of the Supreme Court."[4]

• *To protect the workload of the Supreme Court, should routine cases be made final in the lower courts?*

Decrees of Lower Courts Should Be Final for Most Cases

Madison: "Observed that unless inferior tribunals were dispersed throughout the republic with *final* jurisdiction in *many* cases, appeals would be multiplied to a most oppressive degree; that, besides, an appeal would not in many cases be a remedy."[5]

• *Isn't a network of inferior courts a needless extravagance?*

Lower Courts Ensure Great Savings

King: "Remarked, as to the comparative expense, that the establishment of inferior tribunals would cost infinitely less than the appeals that would be prevented by them."[6]

PROVISION

183

From Article III.2.3

The trial of all crimes, except in cases of impeachment, shall be by jury.

In an impeachment proceeding, the trial is before the Senate; however, in all criminal cases the defendant has the RIGHT of trial by jury.

To appreciate how important the Founders considered this provision to be, we need to briefly trace the historical setting of the jury system as an instrument of justice to safeguard the rights of the people.

The Original American Common Law Jury System

Up until 1895 Americans enjoyed all of the powers of the original common law jury. This was a far more powerful instrument of justice than the jury system today. In fact, the Founders considered it the foremost defense in the American legal structure to protect the people against oppressive laws passed by the legislature or abusive judges deliberately misinterpreting the law.

The common law jury not only had power to "determine the facts," but it also had authority to "determine the law." It could determine what the law meant and whether or not the jury considered it constitutional. The jury could even ignore the law if it felt it would cause an injustice if applied to the case at hand.

Under these circumstances the jury was allowed to hear the arguments of attorneys on both sides as to the meaning of the law and how it should be applied in that particular case.

Furthermore, although the judge interpreted the law for the jury, they were not bound to accept his interpretation. In other words, the interpretation of the judge was merely "advisory." The jury was free to reach its own conclusions as

to just what the law required.

Such were the powers of the original American common law jury.

John Jay, the First Chief Justice, Describes Power of the Jury

The power of the common law jury was stated by Chief Justice John Jay in the first jury trial before the Supreme Court in 1794. The case was entitled Georgia v. Brailsford (3 Dall. 1). This was a case in which the Supreme Court had original jurisdiction and therefore a jury was impaneled to determine both the law and the facts. In his instructions to the jury, the Chief Justice outlined the independent authority of the jury in those days:

"It may not be amiss, here, gentlemen, to remind you of the good old rule, that on questions of fact, it is the province of the jury, on questions of law it is the province of the court to decide. But it must be observed that by the same law, which recognizes this reasonable distribution of jurisdiction, *you have nevertheless a right to take upon yourselves to judge of both, and to determine the law as well as the fact controversy.* On this, and on every other occasion, however, we have no doubt you will pay that respect which is due to the opinion of the court; for, as on the one hand, it is presumed that juries are the best judges of facts; it is, on the other hand, presumable that the courts are the best judges of law. *But still, both objects are lawfully within your power of decision.*"[7]

In this statement Chief Justice Jay was simply emphasizing the established principle that while he hoped the jury would give respectful consideration to the law as he had interpreted it for them, it was nevertheless their privilege to put their own interpretation on it if they wished.

Thomas Jefferson emphasized this same principle. Where a judge is handling a case alone, he decides the law, but if it is a jury trial, the jury makes the final judgment on both the law and the facts. Jefferson wrote:

"These magistrates have jurisdiction both criminal and civil. If the question before them be a question of law only, they decide on it themselves; but if it be of fact, or of fact and law combined, it must be referred to a jury. In the latter case, of a combination of law and fact, it is usual for the jurors to decide the fact, and to refer the law arising on it to the decision of the judges. But this division of the subject lies with their discretion only. And if the question relate to any point of public liberty, or if it be one of those in which the judges may be suspected of bias, the jury undertake to decide both law and fact. If they be mistaken, a decision against right, which is casual only, is less dangerous to the State, and less afflicting to the loser, than one which makes part of a regular and uniform system. In truth, it is better to toss up cross and pile in a cause, than to refer it to a judge whose mind is warped by any motive whatever, in that particular case. But the common sense of twelve honest men gives still a better chance of just decision, than the hazard of cross and pile."[8]

Limitations on the Common Law Jury

It must be understood, of course, that a jury could not repeal a law, but if it thought the law was unconstitutional or oppressive in a particular case, the jury could return a verdict of "not guilty" on the basis of their opinion of the law.

At the same time, the jury could not use its interpretation of the law to injure anyone. In other words, while it had the

power to interpret the law to prevent the government from taking a person's money, life, or property, it could not turn around and use its interpretation of the law to take any of these things away from him out of malice.

Common Law Jury a Safety Net in Case of Government Abuse

During the constitutional ratification debates, there were numerous comments to the effect that in case the chains of the Constitution did not protect the people from abuse, the common law jury would be their safety net or "palladium" of protection. Here is a statement by Theophilus Parsons, chief justice of the supreme court of Massachusetts, which we have previously mentioned:

"An act of usurpation is not obligatory; it is not law; and any man may be justified in his resistance. Let him be considered as a criminal by the general government, yet only his own fellow citizens can convict him; they are his jury, and if they pronounce him innocent, not all the powers of Congress can hurt him; and innocent they certainly will pronounce him, if the supposed law he resisted was an act of usurpation."[9]

Alexander Hamilton added this comment: "The friends and adversaries of the plan of the convention [the Constitution]...concur at least in the value they set upon the trial by jury.... The former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government."[10]

Gradual Loss of Jury Rights Through Judicial Usurpation

In spite of the clear statement of Chief Justice John Jay concerning the prerogatives of the common law jury under which the American system of justice was first established, the courts have used a variety of methods to invade its turf. By using ironclad instructions to the jury they were beginning to straightjacket juries to an observable degree as early as 1852. Lysander Spooner pointed out the seriousness of this erosion of America's foremost security against government abuse:

"For more than six hundred years—that is, since Magna Carta, in 1215—there has been no clearer principle of English or American constitutional law, than that, in criminal cases, it is not only the right and duty of juries to judge what are the facts, what is the law, and what was the moral intent of the accused; *but that it is also their right, and their primary and paramount duty, to judge of the justice of the law, and to hold all laws invalid, that are, in their opinion, unjust or oppressive, and all persons guiltless in violating, or resisting the execution of, such laws.*"[11]

Sparf & Hansen v. U.S. Case

The pressure by the courts to deprive the jury of the right to find the law as well as the facts finally prevailed after the case of *Sparf* v. *U.S.*[12] in 1895. From then on the strict instructions of the judges defined for the jury precisely what the judge considered the law to be, and the jury was left without an option in reaching its decision, regardless of how unjust or unconstitutional the jury might consider the law to be.

Thereafter the jury gradually fell into considerable disrepute as a cumbersome and extremely expensive instrument of the judicial system. Nevertheless, it has survived to its present state as the "finder of the facts" in spite of its detractors.

The Jury System Unique to the United States

The jury system originated as part of the English heritage and spread around the world with the expansion of the British empire. However, except for the United States, the Anglo-American jury system has almost become extinct. England herself limits jury trials to a small number of cases by statute. The same tendency has been followed in her various commonwealths. Hungary abandoned the jury system in 1919 and Germany followed suit in 1924. None of the fascist countries has ever allowed juries to function, and the entire Soviet bloc eliminated whatever jury system might have existed. Japan abolished the jury in 1943 and France never restored the jury after the Nazi occupation during World War II.

Today the United States conducts an estimated 120,000 jury trials annually, which is about 90 percent of all such trials held throughout the world. Because of the expense of jury trials there was a temporary trend to eliminate such trials in the United States for minor offenses. However, in 1968 the Supreme Court held in *Duncan* v. *Louisiana* that a defendant has a legal right to a jury trial in any case where the penalty exceeds six months.

Although the competence of the jury system is sometimes questioned, a recent survey showed that out of 7,000 jury trials the judges agreed with the decisions of the juries in 78 percent of the cases. It has been suggested that this is just about as high as the percentage of cases where the judges agree with each other!

A variety of questions arose during the debates which were answered by the Founders as follows:

- *Why is trial by jury so important?*

There Is Great Danger in Criminal Cases

Iredell: "The greatest danger from ambition is in criminal cases. But here they have no option. The trial must be by jury, in the state wherein the offense is committed; and the writ of *habeas corpus* will in the meantime secure the citizen against arbitrary imprisonment, which has been the principal source of tyranny in all ages."[13]

Jury to Safeguard Against Arbitrary Power of Judges

Iredell: "As to criminal cases, I must observe that the great instrument of arbitrary power is criminal prosecutions.... There is no other safe mode to try these but by jury. If any man had the means of trying another his own way, or were it left to the control of arbitrary judges, no man would have that security for life and liberty which every freeman ought to have."[14]

- *Could Congress suspend the right of trial by jury?*

It Would Be an Impeachable Offense

Iredell: "Can we believe that Congress either would or could take it away?...Were they to attempt it, their authority would be instantly resisted. They would draw down on themselves the resentment and detestation of the people. They... would be held in eternal infamy, and the attempt prove as unsuccessful as it was wicked."[15]

- *Who should serve as jurors?*

Originally, Jurors Consisted of Neighbors

Henry: "By the bill of rights of England, a

subject has a right to a trial by his peers. What is meant by his peers? Those who reside near him, his neighbors, and who are well acquainted with his character and situation in life."[16]

Jury Designed As a Protection of "Neighbors" from Outside Oppression

Henry: "Why do we love this trial by jury? Because it prevents the hand of oppression from cutting you off.... Has not your mother country magnanimously preserved this noble privilege upwards of a thousand years? ... This gives me comfort—that, as long as I have existence, my neighbors will protect me."[17]

Jury Originally Expected to Know Offender and Local Conditions

Holmes: "A jury of the peers would, from their local situation, have an opportunity to form a judgment of the *character* of the person charged with the crime, and also to judge of the *credibility* of the witnesses."[18]

Jury Designed for Official Local Justice

Wilson: "Where jurors can be acquainted with the characters of the parties and the witnesses—where the whole cause can be brought within their knowledge and their view—I know no mode of investigation equal to that by a jury: they hear every thing that is alleged; they not only hear the words, but they see and mark the features of the countenance; they can judge of weight due to such testimony; and moreover, it is a cheap and expeditious manner of distributing justice. There is another advantage annexed to the trial by jury; the jurors may indeed return a mistaken or ill-founded verdict, but their errors cannot be systematical."[19]

• *In what manner should juries be chosen?*

Selection Methods Vary Widely

Wilson: "It is true, there is no particular regulation made, to have the jury come from the body of the county in which the offense was committed; but there are some states in which this mode of collecting juries is contrary to their established custom, and gentlemen ought to consider that this Constitution was not meant merely for Pennsylvania. In some states, the juries are not taken from a single county. In Virginia, the sheriff, I believe, is not confined even to the inhabitants of the state, but is at liberty to take any man he pleases, and put him on the jury. In Maryland, I think, a set of jurors serve for the whole western shore, and another for the eastern shore."[20]

Method of Selecting Federal Jury Should Be According to State Requirements

Gore: "It had been clearly shown, that no words could be adopted, apt to the situation and customs of each state in this particular. Jurors are differently chosen in different states, and in point of qualification the laws of the several states are very diverse; not less as in the cases and disputes which are entitled to trial by jury. What is the result of this? That the laws of Congress may and will be conformable to the local laws in this particular, although the Constitution could not make a universal rule equally applying to the customs and statutes of the different states. Very few governments (certainly not this) can be interested in depriving the people of trial by jury.... In criminal cases alone are they interested to have the trial under their own control; and, in such cases, the Constitution expressly stipulates for trial by jury."[21]

Why It Had to Be Left Up to the States

Wilson: "By the Constitution of the different states, it will be found that no particular mode of trial by jury could be discovered that would suit them all. The manner of summoning jurors, their qualifications, of whom they should consist, and the course of their proceedings, are all different in the different states; and I presume it will be allowed a good general principle, that, in carrying into effect the laws of the general government by the judicial department, it will be proper to make the regulations as agreeable to the habits and wishes of the particular states as possible; and it is easily discovered that it would have been impracticable, by any general regulation, to give satisfaction to all. We must have thwarted the custom of eleven or twelve to have accommodated any one....

"The Convention...left it therefore to be particularly organized by the legislature—the representatives of the United States—from time to time, as should be most eligible and proper."[22]

• *What about the lack of any provision for the challenging of jurors?*

"Trial by Jury" Includes Traditional Procedures Relating to Jury Trials

Madison: "He is displeased that there is no provision for preemptory challenges to juries. There is no such provision made in our Constitution or laws.... Where a technical word was used, all the incidents belonging to it necessarily attended it. The right of challenging is incident to the trial by jury, and therefore, as one is secured, so is the other."[23]

• *Why was there no provision for juries in civil cases until the Bill of Rights was passed?*

State Provisions Too Varied

Holmes: "It is asked, Why is not the Constitution as explicit in securing the right of jury in civil as in criminal cases? The answer is, because it was out of the power of the Convention. The several states differ so widely in their modes of trial, some states using a jury in cases wherein other states employ only their judges, that the Convention have very wisely left it to the federal legislature to make such regulations as shall, as far as possible, accommodate the whole."[24]

Civil Cases Left Up to States

Hamilton: "A power to constitute courts is a power to prescribe the mode of trial; and consequently, if nothing was said in the Constitution on the subject of juries, the legislature would be at liberty either to adopt that institution or to let it alone. This discretion, in regard to criminal causes, is abridged by the express injunction of trial by jury in all such cases; but it is, of course, left at large in relation to civil cases, there being a total silence on this head. The specification of an obligation to try all criminal cases in a particular mode excludes indeed the obligation or necessity of employing the same mode in civil cases, but does not abridge the *power* of the legislature to exercise that mode if it should be thought proper....

"From these observations this conclusion results: that the trial by jury in civil cases would not be abolished."[25]

State Free to Control Civil Procedures

Hamilton: "It must appear unquestion-

ably true that trial by jury is in no case abolished by the proposed Constitution, and it is equally true that in those controversies between individuals in which the great body of the people are likely to be interested, that institution will remain precisely in the same situation in which it is placed by the state constitutions.... The foundation of this assertion is that the national judiciary will have no cognizance of them, and of course they will remain determinable as heretofore by the State courts only, and in the manner which the State constitutions and laws prescribe."[26]

• *When facts are in question, isn't a jury the only appropriate way to determine such facts?*

Juries Not Competent to Try International Disputes

Hamilton: "There are many cases in which the trial by jury is an ineligible one. I think it so particularly in cases which concern the public peace with foreign nations—that is, in most cases where the question turns wholly on the laws of nations.... Juries cannot be supposed competent to investigations that require a thorough knowledge of the laws and usages of nations; and they will sometimes be under the influence of impressions which will not suffer them to pay sufficient regard to those considerations of public policy which ought to guide their inquiries. There would of course be always danger that the rights of other nations might be infringed by their decisions so as to afford occasions of reprisal and war. Though the proper province of juries be to determine matters of fact, yet in most cases legal consequences are complicated with fact in such a manner as to render a separation impracticable."[27]

PROVISION

184

From Article III.2.3

Such trials shall be held in the state where the alleged crime was committed.

This provision gives the defendant the RIGHT to have his trial in the state where the alleged crime was committed so that his witnesses and family can attend the proceedings with the least amount of expense and inconvenience.

Edmund Pendleton of Virginia commented on the safeguards which the Founders were endeavoring to provide the accused in a criminal case. He said that this provision and the one preceding it guarantee "that the trial shall be by jury [and] that it shall be in the state where the offense is committed.... We have this security—that our citizens shall not be carried out of the state, and that no other trial can be substituted for that by a jury."[28]

One of the most serious complaints in the Declaration of Independence against King George III was the fact that he was condemned by the American colonies "for transporting us beyond [the] seas to be tried for pretended offenses."

Under the new Constitution the Founders did not want similar incidents of injustice to occur where a citizen was tried in one state for a crime allegedly committed in another.

PROVISION

185

From Article III.2.3

When a crime is committed outside of any state, the Congress shall indicate the place where the trial shall be held.

When a crime has been committed in a territory, on the high seas, or in a region outside of any state, the accused has the RIGHT to be heard in a federal court at a place designated by Congress.

In the Northwest Ordinance, passed in 1787—the same year the Constitution was written—Congress had provided for the administrative affairs of the one major territory that was under its jurisdiction at that time. However, there were other regions for which no provision was made. In the above section the Founders indicated that any judicial questions outside of any state or on the high seas should be settled in a manner dictated by Congress.

PROVISION

186

From Article III.3.1

Treason against the United States shall consist of levying war against them or adhering to their enemies by giving them aid and comfort.

This provision gives the American people the RIGHT to charge any person with treason who has waged war against the United States or supported its enemies by giving them aid and comfort.

In colonial times, according to Blackstone, England had seventeen different acts which were described as "treason." The penalty was death by hanging until unconscious, followed by revival, then disemboweling, beheading, and quartering.

In the Constitutional Convention it was proposed that the Congress be allowed to specifically define *treason* because the Founders felt that this might be abused by federal officials as it had been in England. Treason became the only crime to be defined in the Constitution. It was limited to two offenses, namely, levying war against the United States and ad-

hering to its enemies by giving them aid and comfort.

It is noteworthy that treason can be committed by any citizen living either in the United States or abroad. Treason can also be committed by an alien living within the United States and consequently receiving the benefit of its protection.

The Supreme Court has held that a foreign nation cannot be classified as an "enemy" until Congress has made a formal declaration of war against it. It will be recalled that there was no declaration of war in the Korean and Vietnam wars; therefore, a number of Americans who were sympathetic to the communist North Koreans or the communist North Vietnamese collected for blood banks and assembled medicine, clothes, and other supplies to give aid and comfort to those who were killing thousands of American soldiers.

The failure of Congress to declare war and thereby outlaw the support of a *de facto* enemy was based on the amazing theory that the "no win" wars in Korea and Vietnam were simply peace-keeping missions or "police actions" to fulfill our obligations under the SEATO pact of the United Nations. The Founders have said it more simply: "Unless Congress declares a war, there is no constitutional authority to fight a war." Of course, the President can repel an invasion pending the assembling of Congress.

A variety of questions which arose during the debates included the following:

• *Why was this one crime singled out to be included in the Constitution?*

Legislatures Use Treason to Oppress the People

Wilson: "Whenever the general government can be a party against a citizen, the trial is guarded and secured in the Constitution itself, and therefore it is not in its power to oppress the citizen. In the case of treason, for example, though the prosecution is on the part of the United States, yet the Congress can neither define nor try the crime. If we have recourse to the history of the different governments that have hitherto subsisted, we shall find that a very great part of their tyranny over the people has arisen from the extension of the definition of treason. Some very remarkable instances have occurred, even in so free a country as England. If I recollect right, there is one instance that puts this matter in a very strong point of view. A person possessed a favorite buck, and, on finding it killed, wished the horns in the belly of the person who killed it. This happened to be the king: the injured complainant was tried, and convicted of treason for wishing the king's death.

"I speak only of free governments; for, in despotic ones, treason depends entirely upon the will of the prince. Let this subject be attended to, and it will be discovered where the dangerous power of the government operates on the oppression of the people. Sensible of this, the Convention has guarded the people against it, by a particular and accurate definition of treason."[29]

• *What if Congress expanded the definition of treason to oppress the people?*

Congress Cannot Expand the Definition by Statute

Wilson: "You will find the current running strong in favor of humanity; for this is the first instance in which it has not been left to the legislature to extend the crime and punishment of treason so far

as they thought proper. This punishment, and the description of this crime, are the great sources of danger and persecution, on the part of government, against the citizen. Crimes against the state! And against the officers of the state! History informs us that more wrong may be done on this subject than on any other whatsoever. But, under this Constitution, there can be no treason against the United States, except such as is defined in this Constitution. The manner of trial is clearly pointed out; the positive testimony of two witnesses to the same overt act, or a confession in open court, is required to convict any person of treason."[30]

Importance of Closely Defining Treason

Madison: "As new-fangled and artificial treasons have been the great engines by which violent factions, the natural offspring of free government, have usually wreaked their alternate malignity on each other, the convention have, with great judgment, opposed a barrier to this peculiar danger, by inserting a constitutional definition of the crime, fixing the proof necessary for conviction of it, and restraining the Congress, even in punishing it, from extending the consequences of guilt beyond the person of its author."[31]

• *In the original text of the Constitution, how did this provision read and how was it changed?*

The Wording Was Carefully Considered

Randolph: "Thought the clause defective in adopting the words 'in adhering' only. The British statute adds, 'giving them aid and comfort,' which had a more extensive meaning."[32]

Wilson: "Held 'giving aid and comfort' to be explanatory, not operative words."[33]

Johnson: "Considered 'giving aid and comfort' as explanatory of 'adhering.'"[34]

Mason: "Moved to insert the words 'giving them aid and comfort' as restrictive of 'adhering to their enemies, etc.' The latter, he thought, would be otherwise too indefinite."[35] (The motion passed.)

• *Can there be charges of treason against individual states?*

Treason Applies Only to the Union

King: "'Against the United States'... excludes any treason against particular states. These may, however, punish offenses as high misdemeanors."[36]

Sherman: "Resistance against the laws of the United States, as distinguished from resistance against the laws of a particular state, forms the line."[37]

Johnson: "There could be no treason against a particular state."[38]

King: "The legislature might punish capitally under other names than treason."[39]

Treason includes "giving aid and comfort" to an enemy.

PROVISION 187

From Article III.3.1

No person shall be convicted of treason unless there is testimony from two witnesses to the same overt criminal act, or the accused makes confession in open court.

This provision gives a person accused of treason the RIGHT to require at least two witnesses to the same criminal act, or a conviction based on a voluntary confession in open court.

The Constitution requires that a person cannot be convicted of treason unless there is the testimony of two witnesses, and, of course, under the Sixth Amendment the prisoner must be confronted with the witnesses testifying against him. One of the most notorious cases in English law was the execution of Sir Walter Raleigh in 1618. His conviction was obtained on the single deposition (written testimony) of Lord Cobhan, an accomplice and a prisoner, who was not examined in court and was already known to have retracted his accusation. The Founders did not want any instance of such gross injustice to occur in the United States.

To be convicted of treason one must perform an "overt act." It is not sufficient to merely think of committing treason. The offender must have committed an overt act in carrying out his intention to levy war or give aid to the enemy, and this must have been observed by at least two witnesses.

PROVISION 188

From Article III.3.2

The Congress shall have power to declare what the punishment for treason shall be.

This provision not only gives the Congress the RIGHT to declare what the punishment for treason shall be, but it gives the accused the RIGHT not to be punished for treason under a mandate by any other body.

In 1790 Congress prescribed death by hanging as the punishment for treason. In 1862 Congress enacted a law punishing the traitor by death, as well as liberating his slaves; or imprisoning him for not less than five years, with a fine of not less than $10,000, and liberating his slaves.

Today the punishment is death, or imprisonment and fine, and the loss of any

right to hold office under the United States.

The Rosenberg Case

During World War II the atomic bomb was developed by the United States in an atmosphere of the most profound secrecy. Through subversive activities, the Soviet Union used its allied status to secretly secure vast quantities of uranium salts and the associated ingredients necessary to construct an atomic bomb. However, they were unable to obtain a detonator and therefore employed two Americans to get the U.S. design. To the surprise of everyone, the Soviets exploded an atomic bomb many years before they were expected to do so, thereby creating an ominous tension throughout the world. Under the umbrella of this new advantage, Joseph Stalin then launched a series of military conquests, and the United States soon found itself involved in heavy warfare as a result of its obligations to help defend its allies. The United States was in Korea in the midst of a most costly conflict—in both treasure and bloodshed—at the time the FBI identified the two spies who had helped the Soviet Union get the plans for the detonator. They were Julius and Ethel Rosenberg. They were tried and convicted in 1951 and were executed in 1953. Although there was a worldwide campaign to have their sentence commuted to life, the execution took place.

In handing down his sentence, Judge Irving Robert Kaufman made the following statement:

"Plain, deliberate contemplated murder is dwarfed in magnitude by comparison with the crime you have committed.... I believe your conduct in putting into the hands of the Russians the A-bomb, years before our best scientists predicted Russia would perfect the bomb, has already caused—in my opinion— the communist aggression in Korea, with the resultant casualties exceeding 50,000; and who knows but that millions more of innocent people may pay the price of your treason.

"Indeed, by your betrayal you undoubtedly have altered the course of history.... What I am about to say is not easy. I have deliberated for hours, days and nights.... I have searched my conscience—to find some reason for mercy—for it is only human to be merciful and it is natural to try and spare lives. I am convinced, however, that I would violate the solemn and sacred trust that the people of this land have placed in my hands were I to show leniency to the defendants Rosenberg.

"It is not in my power, Julius and Ethel Rosenberg, to forgive you. Only the Lord can find mercy for what you have done.... You are hereby sentenced to death."[40]

Ethel and Julius Rosenberg were executed in 1953 for giving atomic secrets to the Soviet Union.

PROVISION 189
From Article III.3.2

In treason cases there can be no "attainder of treason," whereby the penalty shall extend to the forfeiture of property, or any other penalty beyond the life of the accused.

This provision protects the family of a person accused of treason and gives the family and heirs the RIGHT to the return of the accused person's real estate after the termination of his life.

All of this harks back to the dark days in English history. The Crown often indulged itself in plunder by accusing some wealthy landowner of treason and then confiscating his estate. This was not done at a trial but by an act of Parliament, called a "bill of attainder." The "attainder" referred to the pointing of the finger at the accused. Once he had been "fingered" or "attainted," his property could be permanently confiscated by the Crown after the culprit was executed.

The United States ran into a similar problem during the Civil War. Officers of the military or the United States government who were under oath to serve the Union, but joined the Confederate cause, were declared to be not only rebels but guilty of treason. Action was therefore taken against their estates and many of them were confiscated and sold. Nevertheless, after the death of these individuals, their heirs demanded back the property on the basis of this provision. To the shocked amazement of the purchasers, the Supreme Court ruled that the property had to be returned to the heirs. The property of a rebel could be expropriated for the life of the offender, but it could not be permanently "attainted" as far as his family was concerned. The Constitution said so.

Benedict Arnold, perhaps the most famous traitor in American history. Facing page: *Benedict Arnold escapes capture by the American soldiers.*

1. Elliot, 3:520.

2. *Federalist Papers,* No. 80.

3. Ibid., No. 82; emphasis added.

4. Elliot, 3:560.

5. Madison, p. 60.

6. Ibid., p. 61.

7. Quoted in the dissenting opinion of 156 U.S. 51; emphasis added.

8. Padover, *The Complete Jefferson,* p. 656.

9. Elliot, 2:93–94.

10. *Federalist Papers,* No. 83.

11. Lysander Spooner, *An Essay on the Trial by Jury* (1852; reprint ed., New York: Da Capo Press, 1971), p. 5.

12. 156 U.S. 51.

13. Elliot, 4:144–45.

14. Ibid., p. 71.

15. Ibid., p. 148.

16. Ibid., 3:579.

17. Ibid., pp. 545–46.

18. Ibid., 2:110.

19. Ibid., pp. 516–17.

20. Ibid., p. 450.

21. Ibid., p. 112.

22. Ibid., p. 488.

23. Ibid., 3:530–31.

24. Ibid., 2:114.

25. *Federalist Papers,* No. 83.

26. Ibid.

27. Ibid.

28. Elliot, 3:520–21.

29. Ibid., 2:487–88.

30. Ibid., p. 469.

31. *Federalist Papers,* No. 43.

32. Madison, p. 431.

33. Ibid.

34. Ibid.

35. Ibid., p. 434.

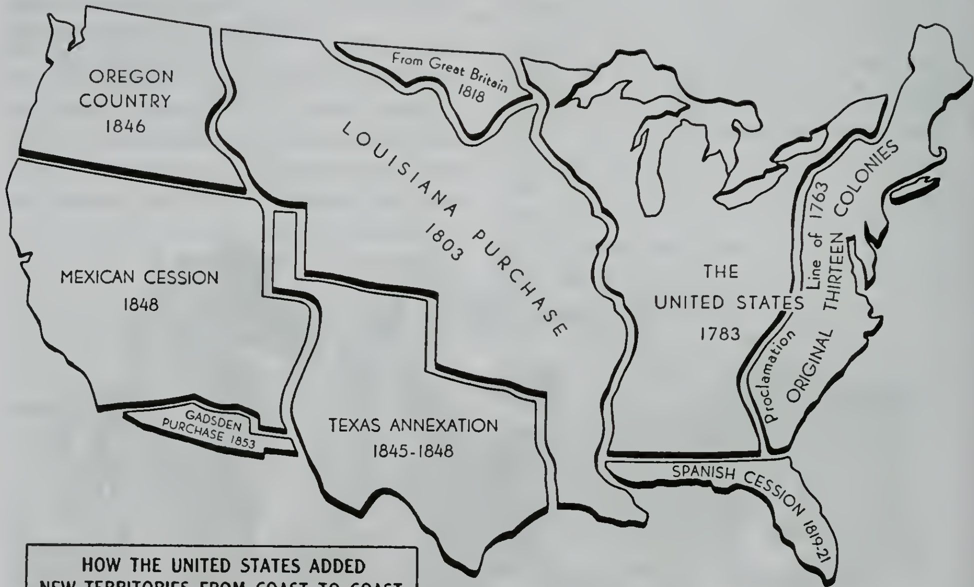
36. Ibid., p. 433.

37. Ibid.

38. Ibid., p. 432.

39. Ibid.

40. Quoted in W. Cleon Skousen, *The Naked Communist,* 11th ed. (Salt Lake City: The Reviewer, 1962), pp. 200–201.



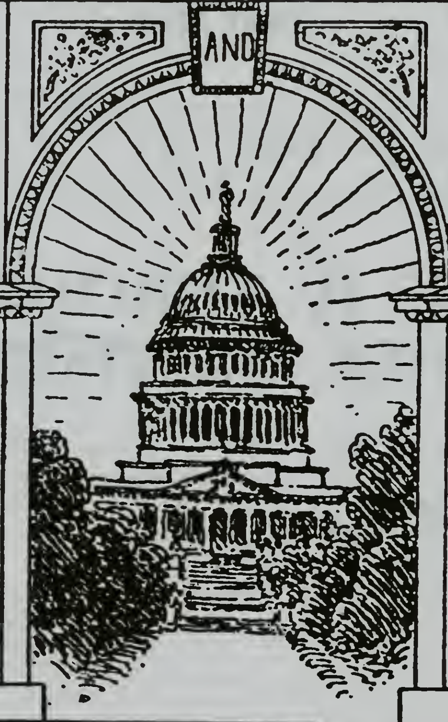
HOW THE UNITED STATES ADDED
NEW TERRITORIES FROM COAST TO COAST

PART FIVE

ARTICLES IV THROUGH VII—OTHER PROVISIONS

THE AMERICAN UNION

EACH
FOR
ALL



ALL
FOR
EACH

CHAPTER

THE UNION OF STATES AND THE AMENDMENT PROCESS

The Founders' structure of the Constitution up to this point was their endeavor to establish the three great branches of government on a firm foundation. They had to first divide them into separate branches, then carefully correlate them so that they could function together in a balanced manner with powerful checks on one another should any abuses occur. This was a masterful accomplishment, never before achieved by any nation in modern times.

The next task was to get the states to cooperate together, giving full faith and credit to their official acts and allowing new states to be formulated on an equal footing with the original thirteen. There also had to be a clear understanding that any territory not yet organized into states was under the management and control of the federal government. Nevertheless, the independent states were not

to feel intimidated or abandoned in case of threatened invasion or insurrection, since the federal government guaranteed both their security and their representative form of government.

Last of all, there was the matter of amending the Constitution. The Founders provided two approaches. One was a cooperative effort between the Congress and the state legislatures. The other anticipated the possibility that the people might not get what they wanted from Congress, so the Founders made it possible for the states to amend the Constitution independent of the Congress.

These are the major features of this chapter.

PROVISION

190

From Article IV.1

Full faith and credit shall be given by each state to the public acts, records, and judicial proceedings of every other state.

This gives each state the RIGHT to have its official acts recognized and accepted by every other state. It also gives every American the RIGHT to have any adjudication or decree in his own state officially accepted and legalized before the courts and administrative officials of all the other states.

This is one of the "nationalizing" clauses of the Constitution. It was designed to prevent a citizen from avoiding his responsibilities or liabilities simply by moving out of a particular state. Thus, if a judgment were obtained against a person in one state, the authenticated record of that judgment could be taken to another state where the defendant had moved and could be used to collect from him in his new domicile without having to go into the court of that state and prove the case all over again.

The Constitution specified that each state was to recognize and respect the official acts of every other state. Shown here is a state legislature in session.

PROVISION

191

From Article IV.1

The Congress shall prescribe the manner in which the official proceedings of each state shall be proved so as to be acceptable and effective in all of the other states.

This provision gives the Congress the RIGHT to prescribe the form and manner in which official papers of one state shall be prepared in order to be officially accepted in all of the other states.

Official state records are authenticated by having a copy with the seal of a particular state certified by an officer of that state that it is a true and correct record. Court records of a state are authenticated by having the clerk and the judge of that court certify to their authenticity with the seal of that court attached.

Comments by the Founders concerning this clause include the following:

The Need for a Uniform System

Madison: "The power of prescribing by general laws the manner in which the public acts, records, and judicial proceedings of each state shall be proved, and the effect they shall have in other States, is an evident and valuable improvement on the clause relating to this subject in the Articles of Confederation.... The power here established may be rendered a very convenient instrument of justice, and be particularly beneficial on the borders of contiguous States."[1]

It Was Important to Declare the Effect

Wilson: "Remarked that if the legislatures were not allowed to *declare the effect*, the provision would amount to nothing more than what now takes place among all independent nations."[2]

Johnson: "Thought the amendment, as worded, would authorize the general legislature to declare the effect of legislative acts of one state in another state."[3]

PROVISION

192

From Article IV.2.1

The citizens of each state shall be entitled to all of the privileges and immunities of the citizens of the several states.

This provision made the United States one nation, with each citizen having the same RIGHTS in all the other states that he is entitled to enjoy in his own state.

Numerous cases have arisen under this clause wherein states have attempted to favor their own citizens to the prejudice of the citizens of other states. Nevertheless, the courts have held that it is not prejudicial to require nonresidents to pay a fee for attending state schools or to pay a higher hunting and fishing license fee, since these resources are maintained at considerable expense by the taxpayers of the host state and thus nonresidents are not put in a prejudicial position by being required to pay their fair share.

The rights which are common to the citizens of all states are described in the federal case *Corfield* v. *Coryell* as follows:

"Protection by the government; the enjoyment of life, and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; ... the right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of *habeas corpus*; to institute and maintain actions of any kind in the courts of the states; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by other citizens of the state."[4]

Hamilton stated that it was this provision of universal citizenship that "may be esteemed the basis of the Union." [5]

PROVISION 193
From Article IV.2.2

Any fugitive from justice who is found in another state shall, upon demand of the governor of the state where the offense occurred, be delivered over to the authorities having jurisdiction over the case.

This provision gave each state the RIGHT to demand the return of any person charged with criminal acts within its jurisdiction.

The returning of a fugitive to the state where he committed his crime is called *extradition*. A fugitive may be extradited for any indictable offense under the laws of the demanding state, but the warrant of extradition must be based either upon a charge made by a person who has sworn he has a personal knowledge of the crime or upon the record of the trial in which the fugitive was convicted.

The governor of the asylum state should not attempt to pass upon the guilt of the fugitive but should merely determine whether or not he is being charged with an offense for which he should be extradited.

When a governor makes a request of the asylum state for the arrest and holding of a prisoner until the papers can be prepared showing that he is a fugitive from justice and should be extradited, the asylum state may arrest the fugitive and hold him for a reasonable time to prevent the fugitive from fleeing elsewhere.

In the Convention notes the following was recorded:

"The words 'high misdemeanor' were struck out, and the words 'other crime' inserted, in order to comprehend all proper cases; it being doubtful whether 'high misdemeanor' had not a technical meaning too limited."[6]

PROVISION 194

Since a governor is responsible for the safety and well-being of all persons residing within his state, he is not required to extradite a fugitive from justice to another state unless he feels assured that he will receive fair and humane treatment.

This provision is not spelled out in the Constitution but has been accepted by the courts as an implied discretionary power in the governor of the state where the fugitive is found. It gives the governor of the state where a fugitive might be found the implied RIGHT to refuse to return the prisoner to the state seeking extradition if he feels the accused might be mobbed, lynched, or otherwise deprived of fair and humane treatment.

This simply means that it is within the discretion of the governor (of the asylum state) to determine whether or not he wishes to deliver up the fugitive. The language of the Constitution would appear to be mandatory, but the Supreme Court has held that the federal courts cannot intervene in the event a governor has decided that he will not respond to the extradition request. The courts have also refused to examine the basis for his decision because the matter is one of discretionary judgment and therefore final.

Governors have the right and responsibility to determine the extradition of a fugitive.

PROVISION

195

From Article IV.2.3

No person under obligation to perform personal services in one state shall be discharged of such obligation by fleeing to another state where the requirement of such services is unlawful. The person owing such service shall be delivered up to the person having claim on the same.

This had reference to slaves and bond servants and became obsolete after the passage of the Thirteenth Amendment. Since slaves and bond servants under contract were considered a RIGHT of property, this provision was originally intended to protect that right on the insistence of certain states. However, abolishing involuntary servitude of all kinds made this provision a mere footnote on the pages of history.

Note that this is the last of three provisions in the Constitution respecting slavery. It will be recalled that three-fifths of the slaves were to be counted in determining population, and there was a provision that there should be no prohibition against the importation of slaves until after 1808. This final provision was to prevent a slave from escaping to a non-slave state and claiming he was "free" because the state to which he had fled prohibited slavery.

In 1793, the Congress passed an act respecting "fugitives from justice and persons escaping from the service of their masters." In 1850, in an attempt to head off the rumblings of civil war, Congress passed another fugitive-slave law to prevent the northern states from luring slaves away from their masters.

James Iredell commented on the intent of this provision as follows:

"In some of the Northern States they have emancipated all their slaves. If any of our slaves ... go there, and remain there a certain time, they would, by the present laws, be entitled to their freedom, so that their masters could not get them again. This would be extremely prejudicial to the inhabitants of the Southern States; and to prevent it, this clause is inserted in the Constitution. Though the word *slave* is not mentioned, this is the meaning of it. The northern delegates, owing to their particular scruples on the subject of slavery, did not choose the word *slave* to be mentioned."[7]

As soon as some of the states outlawed involuntary servitude, an "underground railroad" was developed to help slaves escape to a "free" state where they would be considered "emancipated."

PROVISION

196

From Article IV.3.1

New states formulated from newly populated territories shall be admitted when they have met the requirements prescribed by law.

This provision gave Americans in territorial regions the RIGHT to be admitted as a state when they had fulfilled the prescribed requirements, and the RIGHT to enter the Union on an equal footing.

The earliest charters of the American colonies seem to have contemplated that eventually they would extend from sea to sea, and it was the expressed ambition of many of the Founders to have the "land of freedom" encompass the entire North American continent.

In the Articles of Confederation (ratified in 1781) there was a special provision for Canada to enter the Union if she so desired, thereby adding to the original thirteen states four more. However, the French Canadians elected not to do so.

In 1787 (the same year the Constitution was adopted), Congress passed the famous Northwest Ordinance, which outlined the manner in which the affairs of the federal territories would be administered. It also provided for the admission of new states as follows:

"And, for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected ... to provide also for the establishment of states, and permanent government therein, and for their admission to a share in the federal councils ON AN EQUAL FOOTING WITH THE ORIGINAL STATES ... it is hereby ordained...

"Article V. There shall be formed in the said territory, not less than three nor more than five states.... And, whenever any of the said [prospective] states shall have sixty thousand free inhabitants therein, such state shall be admitted, by its delegates, into the Congress of the United States ON AN EQUAL FOOTING WITH THE ORIGINAL STATES IN ALL RESPECTS WHATEVER, and shall be at liberty to form a permanent constitution and state government: provided, the constitution and government so formed shall be republican."[8]

When the federal government was formed under the new Constitution in 1789, the Congress reenacted the Northwest Ordinance on September 25. This was the same day the First Amendment was submitted to the U.S. House of Representatives to commence the adoption of a Bill of Rights.

New territories have been added to the United States from time to time as follows:

The United States, under President Jefferson, arranged the Louisiana Purchase in 1803 from the French. This gave the United States a vast new territory extending from the Mississippi to the Rocky Mountains.

In 1819, Florida was secured by President Monroe from Spain.

Texas was admitted in 1845 with the provision that it could be divided into five

states whenever it elected to do so, but the Texans have never been inclined to divide the Lone Star State. If they did, it would not add to their number of Representatives in Congress, but it would give them ten Senators instead of two to represent the present area of Texas in the Senate!

Following the war with Mexico (1846–48), the United States purchased all of the Mexican territory between the Rocky Mountains and the Pacific Ocean for $15 million, at the same time assuming the Mexican government's debts due to American citizens (so long as the total did not exceed $3,500,000).

In 1867, Alaska was purchased from Russia for $7,200,000 by President Andrew Johnson.

In 1893 Americans living on the Hawaiian Islands led a revolt, and in 1900 they were made a territory of the United States.

After the Spanish-American War in 1898, several Spanish territories were acquired by the United States, including Puerto Rico and Guam.

In connection with World War I, the United States acquired the Virgin Islands in 1917.

As new states have been admitted by Congress, the rule of "equal footing" has been honored — until the western states began to seek admission. The Congress began imposing restrictions on these states which had never been imposed on earlier states. The most significant restriction was the retention of huge sections of these states (e.g., 87 percent of Nevada) as federal territory. About 96 percent of Alaska was retained. Restrictions imposed on the territory of Utah kept that region from becoming a state for forty years.

PROVISION 197

From Article IV.3.1

Congress cannot create a new state within the territory of an existing state without the consent of the legislature of that state.

This provision gives each state the RIGHT to resist any attempt by Congress to create a new state within its borders without the consent of its legislature.

James Madison commented on the clause as follows:

"The particular precaution against the erection of new States, by the partition of a State without its consent, quiets the jealousy of the larger States; as that of the smaller is quieted by a like precaution against a junction of States without their consent."[9]

PROVISION

198

From Article IV.3.1

New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor shall any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the Congress.

This provision gives each state the RIGHT to resist any attempt by Congress to join it with another state or give any part of its territory to another state without the consent of its legislature.

The Founders' comments on this clause include the following:

Sherman: "The Union cannot dismember a state without its consent."[10]

Butler: "If new states were to be erected without the consent of the dismembered states, nothing but confusion would ensue. Whenever taxes should press on the people, demagogues would set up their schemes of new states."[11]

Johnson: "Moved to insert the words 'hereafter formed or' after the words 'shall be,' . . . the more clearly to save Vermont, as being already formed into a state, from a dependence on the consent of New York to her admission."[12]

G. Morris: "Moved to strike out the word 'limits' . . . and insert the word 'jurisdiction.' This also was meant to guard the case of Vermont, the jurisdiction of New York not extending over Vermont, which was in the exercise of sovereignty, though Vermont was within the asserted limits of New York."[13]

PROVISION

199

From Article IV.3.2

The Congress shall have the power to make all needful rules and regulations concerning the management of the property or territory belonging to the United States.

This provision gives Congress the exclusive RIGHT to determine how territory and property belonging to the United States shall be managed and regulated.

This clause supplements Article I, section 8, clause 16.

As new territories were acquired by the United States, they were divided into appropriate regions and designated "territories." The federal government appointed the governor and also the judiciary of each territory, while the territorial legislature was elected by the people. This arrangement continued until the population

had grown sufficiently large to justify an independent state, and the people demonstrated that they would provide an acceptable constitutional form of representative government.

A good example of the somewhat elaborate provisions which Congress had in mind for the management of federal territories is set forth in the Northwest Ordinance, which was reenacted shortly after the government was set up under the new Constitution. It contained six articles:

Article I provided for complete freedom of religion.

Article II set forth a most interesting and comprehensive bill of rights.

Article III provided for schools where "religion, morality, and knowledge" would be taught. It also provided for the fair treatment of Indians and their lands.

Article IV provided that all federal territories and the states created out of them must forever remain a part of the United States and pay their fair share of taxes.

Article V provided for the creation of new states.

Article VI prohibited slavery. (The vote on this article was supported by representatives from all of the southern states.)

PROVISION

200

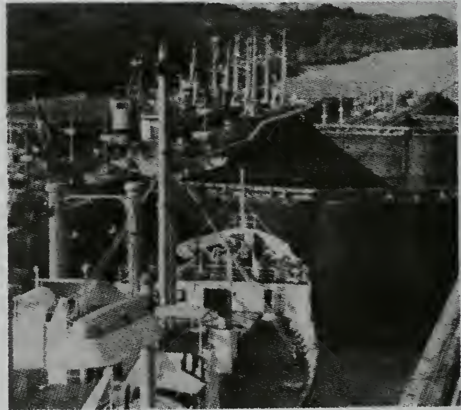
From Article IV.3.2

The Congress shall have power to determine the disposition of any territory or property belonging to the United States.

This provision gives the House and the Senate the exclusive RIGHT to dispose of territory or property of the United States.

Several interesting questions have arisen under this provision:

1. What about the destruction of security files by several agencies following World War II?
2. What about the giveawav of the Panama Canal by means of a treaty without the consent of the House?
3. What about the abandonment of billions of dollars' worth of jeeps, trucks, cranes, tanks, munitions, and other supplies by the military after the Vietnam War?



When President Jimmy Carter used a treaty to give away the Panama Canal, he was violating Article 4, section 3, of the Constitution.

PROVISION 201
From Article IV.3.2

Nothing in this Constitution is to be construed as prejudicing any claims of the United States or of any of the individual states.

This provision protected the RIGHT of the United States and any of the states to claims that were pending and had not yet been settled in the courts.

At the time the Constitution was adopted, some of the states claimed territories which were in dispute with other states; others were involved in territorial disputes with the national government. This constitutional provision was to quiet the fears of states with territorial claims which were then pending.

PROVISION 202
From Article IV.4

The United States guarantees to preserve a republican (freely elected representative) form of government in each of the states.

This provision gives the United States government the RIGHT to intervene in the affairs of any state whenever the right to freely elected representative government has ceased to exist or is in jeopardy of being destroyed.

A republican form of government is one in which the people are governed by freely elected representatives. It is also presumed to be one in which political power is divided, balanced, and limited, much as in the arrangement set forth in the United States Constitution. The people of a state would therefore not be allowed to set up a dictatorship even with popular support.

The two greatest threats to the survival of a republican form of government are invasion and insurrection.

In an early federal case, *Luther* v. *Borden*, it was determined that questions arising under this section are political, not judicial, and that "it rests with Congress to decide what government is the established one in a state...as well as its republican character."[14] Nevertheless, in 1795 Congress authorized the President to call out the militia in case of insurrection against the government of any state. In 1895, in connection with the famous Debs case, it was held that there was a power and duty on the part of the federal government to use "the entire strength of the nation ... to enforce in any part of the land the full and free exercise of all national powers and the security of all rights entrusted by the Constitution to its care."[15]

The constitutions of several states allow the people themselves to make laws by voting on an "initiative referendum." The question is whether or not this is "un-republican" and in violation of this clause. It has also been pointed out that in these states the legislature sometimes shirks its responsibilities on delicate issues by using a referendum at the next election to have the people make a determination of a legislative issue. Unfortunately, referendum issues are sometimes deliberately prepared so as to confuse the public. For example, if one is opposed to a proposal it is sometimes written so that in order to reject the proposal one must vote *yes*, or to ratify the proposal one must vote *no*. It has also been observed that the referendum is an unsatisfactory legislative procedure when the issue is too complex and will require too much study time for the general public to understand it or vote on it intelligently.

So far, the Supreme Court has refused to rule on whether or not the referendum process is an unlawful delegation of legislative authority under the republican system of government.

Here are some of the questions which the Founders addressed in connection with this provision:

• *How important is "the right to vote" in a republic?*

Right of Suffrage Is Fundamental to Republics

Wilson: "In this system, it is declared that the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. This being made the criterion of the right of suffrage, it is consequently secured, because the same Constitution guarantees to every state in the Union a republican form of government. The right of suffrage is fundamental to republics."[16]

• *Is the national government a threat to the state republics?*

Federal Republic Dependent on State Republics

Brooks: "The idea ... that this Constitution would produce a dissolution of the state governments, or a consolidation of the whole...was ill founded—or rather a loose idea. In the first place,...Congress, under this Constitution, cannot be organized without repeated acts of the legislatures of the several states; and, therefore, if the creating power is dissolved, the body to be created cannot exist. In the second place,...it is impossible [that] the general government can exist, unless the governments of the several states are forever existing; as the qualifications of the electors of the federal representatives are to be the same as those of the electors of the most numerous branch of the state legislatures. It was, therefore,... impossible that the state governments should be annihilated by the general government, and it was...strongly implied, from the part of the section under debate which gave Congress power to exercise exclusive jurisdiction over the federal town, that they shall have it over no other place.... As the United States guaranty to *each state* a republican form of government, the state governments were as effectually secured as though this Constitution should never be in force."[17]

• *What about the danger of a wealthy oligarchy taking over a state?*

Republican Government Will Prevent a Few Wealthy Families from Taking Over a State

W. Davie: "Aristocracies grow out of the combination of a few powerful families, where the country or people upon which they are to operate are immediately under their influence....

"When aristocracies are formed, they will arise within the individual states. It is therefore absolutely necessary that Congress should have a constitutional power to give the people at large a representation in the government, in order to break and control such dangerous combinations."[18]

• *What if a state wanted an aristocracy or monarchy?*

No State Can Set Up an Aristocracy or Monarchy

Iredell: "The United States shall *guaranty* to every state in the Union a republican form of government.... The meaning of the guaranty provided was this: There being thirteen governments confederated upon a republican principle, it was essential to the existence and harmony of the confederacy that each should be a republican government, and that no state should have a right to establish an aristocracy or monarchy. That clause was therefore inserted to prevent any state from establishing any government but a republican one.... If a monarchy was established in any one state, it would endeavor to subvert the freedom of the others, and would, probably, by degrees succeed in it.... It is, then, necessary that the members of a confederacy should have similar governments. But consistently with this restriction, the states may make what change in their own governments they think proper."[19]

• *Do the republican governments of the various states all have to be alike?*

Various Forms of Republican Government Permissible

Madison: "In a confederacy founded on republican principles, and composed of republican members, the superintending government ought clearly to possess authority to defend the system against aristocratic or monarchical innovations. The more intimate the nature of such a union may be, the greater interest have the members in the political institutions of each other; and the greater right to insist that the forms of government under which the compact was entered into should be *substantially* maintained.... Governments of dissimilar principles and forms have been found less adapted to a federal coalition of any sort than those of a kindred nature.... Who can say what experiments may be produced by the caprice of particular States, by the ambition of enterprising leaders, or by the intrigues and influence of foreign powers? ... The authority extends no further than to a *guaranty* of a republican form of government, which supposes a pre-existing government of the form which is to be guaranteed. As long, therefore, as the existing republican forms are continued by the States, they are guaranteed by the federal Constitution. Whenever the States may choose to substitute other republican forms, they have a right to do so and to claim the federal guaranty for the latter. The only restriction imposed on them is that they shall not exchange republican for anti-republican Constitutions."[20]

PROVISION 203
From Article IV.4

The United States guarantees every state federal protection from invasion of its sovereign territory.

This provision gives the federal government the RIGHT to use whatever military force is necessary to protect a state from invasion by another state or by a foreign power. It also gives each state the RIGHT to call upon the federal government to protect it from threatened invasion.

From its earliest history the American colonies, and later the states, suffered from border intrusions and sometimes open civil war as the inhabitants of one state invaded the territory of another. Regardless of the reason, border skirmishes constituted a threat to the stability of the Union.

Until the soul-sobering shock of the devastating Civil War, mob action between states was disgracefully common. Sometimes entire communities were put to the torch. It was no idle gesture on the part of the Founders when they included this provision to provide for the sovereign security of the individual states against enemies, both foreign and domestic.

PROVISION 204
From Article IV.4

Any state may call upon the United States government at any time to protect it against domestic violence.

Because domestic violence may exceed the capacity of the state militia to maintain law and order, this provision gives the states the RIGHT to call upon the federal government for assistance when necessary.

The Constitution provides that the state may act through its state legislature if it is in session, or the request may come from the governor if the legislature is not in session.

The only question involved in this clause is whether or not the government may intervene on its own initiative without a request from the officials of a state. As will be seen from the following quotations from the Founders, there was a division of opinion on the subject.

- *At what point should the government intervene?*

Federal Government Should Intervene Only When Summoned

Pendleton: "The state is in full possession of the power of using its own militia to

protect itself against domestic violence; and the power in the general government cannot be exercised, or interposed, without application of the state itself."[21]

Federal Government May Have to Intervene Without Being Summoned

Madison: "Why may not illicit combinations, for purposes of violence, be formed ... by a majority of a State? ... Ought not the federal authority...to support the State authority? Besides, there are certain parts of the State constitutions which are so interwoven with the federal Constitution that a violent blow cannot be given to the one without communicating the wound to the other.... It will be much better that the violence in such cases should be repressed by the superintending power, than that the majority should be left to maintain their cause by a bloody and obstinate contest. The existence of a right to interpose will generally prevent the necessity of exerting it....

"May not the minor party possess such a superiority of pecuniary resources, of military talents and experience, or of secret succors from foreign powers, as will render it superior also in an appeal to the sword? May not a more compact and advantageous position turn the scale on the same side against a superior number so situated as to be less capable of a prompt and collected exertion of its strength? Nothing can be more chimerical than to imagine that in a trial of actual force victory may be calculated by the rules which prevail in a census of the inhabitants, or which determine the event of an election! May it not happen, in fine, that the minority of *citizens* may become a majority of *persons,* by the accession of alien residents, of a casual concourse of adventurers, or of those whom the constitution of the State has not admitted to the rights of suffrage? ...

"In cases where it may be doubtful on which side justice lies, what better umpires could be desired by two violent factions, flying to arms and tearing a State to pieces, than the representatives of confederate States, not heated by the local flame? To the impartiality of judges, they would unite the affection of friends. Happy would it be if such remedy for its infirmities could be enjoyed by all free governments; if a project equally effectual could be established for the universal peace of mankind! ...

"Among the advantages of a confederate republic enumerated by Montesquieu, an important one is 'that should a popular insurrection happen in one of the States, the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound.'"[22]

Federal Government Has a Duty to Intervene

Mason: "If the general government should have no right to suppress rebellions against particular states, it will be in a bad situation indeed. As rebellions against itself originate in and against individual states, it must remain a passive spectator of its own subversion."[23]

• *Is insurrection in one state a serious threat to the rest of the Union?*

Tyranny Once Established Could Threaten the Whole Nation

Gorham: "Thought it strange that a rebellion should be known to exist in the empire and the general government should be restrained from interposing to subdue it. At this stage an enterprising citizen might erect the standard of monarchy in a particular state, might gather together partisans from all quarters, might extend his views from state to

state, and threaten to establish a tyranny over the whole, and the general government be compelled to remain an inactive witness of its own destruction. With regard to different parties in a state, as long as they confine their disputes to words, they will be harmless to the general government and to each other. If they appeal to the sword, it will then be necessary for the general government, however difficult it may be to decide on the merits of their contest, to interpose and put an end to it."[24]

When Federal Intervention Is Necessary

Hamilton: "Seditions and insurrections are, unhappily, maladies as inseparable from the body politic as tumors and eruptions from the natural body....

"Should such emergencies at any time happen under the national government, there could be no remedy but force. The means to be employed must be proportioned to the extent of the mischief. If it should be a slight commotion in a small part of a State, the militia of the residue would be adequate to its suppression; and the natural presumption is that they would be ready to do their duty. An insurrection, whatever may be its immediate cause, eventually endangers all government. Regard to the public peace, if not to the rights of the Union, would engage the citizens to whom the contagion had not communicated itself to oppose the insurgents; and if the general government should be found in practice conducive to the prosperity and felicity of the people, it were irrational to believe that they would be disinclined to its support.

"If, on the contrary, the insurrection should pervade a whole State, or a principal part of it, the employment of a different kind of force might become unavoidable."[25]

PROVISION 205

From Article V.1

This Constitution can be amended by approval of two-thirds of the House and Senate and three-fourths of the state legislatures or state conventions.

This provision gives the people of the United States the RIGHT to amend their constitution by this procedure whenever they felt it might be necessary.

James Madison stated that the Founders hoped their successors would "improve and perpetuate" the Constitution.

Madison knew the Founders had accomplished a tremendous task but that their polished formula for a divided, balanced, limited government could be mutilated by careless, amateur meddling. In praise of the Founders he said: "They accomplished a revolution which has no par-

allel in the annals of human society. They reared the fabrics of government which have no model on the face of the globe. They formed the design of a great Confederacy, which it is incumbent on their successors to improve and perpetuate."[26]

Under their divided system of state and federal governments, the people had two sets of representatives (state and federal), each independent of the other. They therefore provided for the amending of the Constitution through either of these bodies who served as stewards of the people.

The first method is described in the above clause. It required that any proposed amendment be approved by two-thirds of the House and two-thirds of the Senate. It then goes (without requiring the approval of the President) to the states. The states can call special conventions or have their state legislatures scrutinize the amendment. To become part of the Constitution, this clause requires that any proposed amendment must be ratified by three-fourths of the state legislatures or their state conventions.

To date, this is the only procedure that has ever been used to amend the Constitution.

During the ratification process, the question arose as to whether or not a state may approve an amendment and afterwards rescind its approval. So far the governing principle seems to be that when any of the state legislatures takes the step of ratifying an amendment, it has exercised its constitutional authority and can do nothing further on that particular matter. Others contend that any state may change its mind so long as the matter has not been finalized by having three-fourths of the states approve the amendment simultaneously.

It has been held that the states cannot refer a proposed amendment to a popular vote for ratification. The Constitution permits ratification only by the state legislatures or by a special convention.

Although it is recognized that the Founders deliberately made the amending process difficult to achieve (so that the national charter would not be changed recklessly), nevertheless Washington warned that whenever there was a need for a modification, it should be done through the amending process and not by usurpation. In his Farewell Address he said, "Let there be no change by usurpation." The improper delegation of authority by the Congress and the usurpation of authority by the executive and judicial branches are said to be responsible for the most serious problems presently assailing the country.

The following questions and answers will emphasize the importance which the Founders attached to the amending of the Constitution.

- *Why was this provision considered such an important innovation?*

Changes in Most Countries Made by Revolution Only

Jarvis: "The honorable gentleman last speaking has called upon those persons who are opposed to our receiving the present system, to show another government, in which such a wise precaution has been taken to secure to the people the right of making such alterations and amendments, in a peaceable way, as experience shall have proved to be necessary. Allow me to say, sir, as far as the narrow limits of my own information extend, I know of no such example. In other countries, sir—unhappily for mankind—the history of their respective revolutions has

been written in blood; and it is in this only that any great or important changes in our politcal situation has been effected, without public commotions. When we shall have adopted the Constitution before us, we shall have in this article an adequate provision for all the purposes of political reformation. If, in the course of its operation, this government shall appear to be too severe, here are the means by which this severity may be assuaged and corrected. If, on the other hand, it shall become too languid in its movements, here, again, we have a method designated, by which a new portion of health and spirit may be infused into the Constitution."[27]

Constitution Permits Changes by Peaceful Means

Iredell: "This is a very important clause. In every other constitution of government that I have ever heard or read of, no provision is made for necessary amendments.... The Constitution of any government which cannot be regularly amended when its defects are experienced, reduces the people to this dilemma—they must either submit to its oppressions, or bring about amendments, more or less, by a civil war.... The proposition for amendments may arise from Congress itself, when two-thirds of both houses shall deem it necessary. If they should not, and yet amendments be generally wished for by the people, two-thirds of the legislatures of the different states may require a general convention for the purpose, in which case Congress are under the necessity of convening one. Any amendments which either Congress shall propose, or which shall be proposed by such general convention, are afterwards to be submitted to the legislatures of the different states, or conventions called for that purpose, as Congress shall think proper, and, upon the ratification of three-fourths of the states, will become a part of the Constitution. By referring this business to the legislatures, expense would be saved; and in general, it may be presumed, they would speak the genuine sense of the people. It may, however, on some occasions, be better to consult an immediate delegation for that special purpose. This is therefore left discretionary."[28]

• *Why is it necessary to make the amendment process so complicated?*

Amendment Procedure Designed to Prevent Tinkering

Madison: "That useful alterations will be suggested by experience could not but be foreseen.... The mode preferred by the convention...guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults. It, moreover, equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other."[29]

Important to Preserve Constitutional Stability

Madison: "A constitutional road to the decision of the people ought to be marked out and kept open, for certain great and extraordinary occasions. But there appears to be insuperable objections against the proposed recurrence to the people, as a provision in all cases for keeping the several departments of power within their constitutional limits....

"As every appeal to the people would carry an implication of some defect in the government, frequent appeals would, in a

great measure, deprive the government of that veneration which time bestows on everything, and without which perhaps the wisest and freest governments would not possess the requisite stability....

"The danger of disturbing the public tranquillity by interesting too strongly the public passions is a still more serious objection against a frequent reference of constitutional questions to the decision of the whole society....

"But the greatest objection of all is that the decision which would probably result from such appeals would not answer the purpose of maintaining the constitutional equilibrium of the government....

"The public decision ... could never be expected to turn on the true merits of the question. It would inevitably be connected with the spirit of pre-existing parties, or of parties springing out of the question itself. It would be connected with persons of distinguished character and extensive influence in the community.... The *passions*, therefore, not the *reason*, of the public would sit in judgment. But it is the reason, alone, of the public, that ought to control and regulate the government. The passions ought to be controlled and regulated by the government....

"Mere declarations in the written Constitution are not sufficient to restrain the several departments within their legal rights.... Occasional appeals to the people would be neither a proper nor an effectual provision for that purpose."[30]

PROVISION 206

From Article V.1

Should the people of the states desire an amendment which the Congress will not pass, a constitutional convention shall be convened upon the request of two-thirds of the state legislatures, and if three-fourths of the state legislatures or state conventions afterwards ratify any recommended changes, they shall become part of the Constitution.

This provision gives the people of the United States a RIGHT to use an alternative procedure for the amending of the Constitution without having to go through Congress.

This procedure was reserved for a situation in which Congress would not act on a matter which the people strongly desired to have approved. It simply required two-thirds of the states to petition Congress for a convention where they could independently review the matter and submit any proposed amendment to the state legislatures. If three-fourths of the state legislatures or state conventions ratified the amendment, it would become part of the Constitution without requiring approval of either the Congress or the President.

The Congress has been anxious to prevent this second method from being used, so whenever nearly two-thirds of the states have petitioned for a convention,

the Congress has capitulated and passed the amendment itself. This is what happened with the Seventeenth Amendment.

It was the intent of the Founders to provide this second method of amending the Constitution as a protection against a hierarchy of power that might take over Washington and become a self-perpetuating demagoguery which the people could not control. Such a situation arises when an oligarchy of wealth or a structured power bloc gains control of the following:

1. The leadership of both political parties;
2. The majority of the Supreme Court;
3. The majority of the Congress;
4. The White House;
5. The media; and
6. The major centers of education and intellectual opinion making.

This much control over a nation completely debilitates the normal operation of constitutional procedures. The Founders therefore provided this special safety net in Article V to allow the people to regain control of their affairs without even going through Washington.

Why Has This Procedure Not Been Used Extensively?

Probably the only reason why this procedure has been used so rarely in the past is the general misunderstanding of how it is supposed to work.

The greatest concern about this second procedure has been the fear that a constitutional convention called by the states might become a "runaway convention" and set up a radical new constitution. Some cite the example of the constitution drawn up by Dr. Rexford G. Tugwell, which provided for a completely centralized control of the economy and the elimination of many aspects of traditional American freedom. They also cite the example of the original convention, which was assigned to amend the Articles of Confederation but wrote a completely new constitution.

However, the reality of the situation is as follows:

1. The states could call for a convention to consider only a *specific* amendment so as to preclude the risk of a "runaway convention."
2. Anything which the convention did outside of this one issue would be ruled unlawful by the Supreme Court.
3. Whatever the convention recommended would have to be approved by three-fourths of the state legislatures or state conventions. The amendment convention could not impose something on the people they did not approve.

Alexander Hamilton believed this to be a sound procedure. Said he: "There would be no danger in giving this power [to the states for a convention], as the people would finally decide in the case."[31]

There is no doubt that in the past the states have endured many abuses from the Congress and the Supreme Court which could have been rather quickly remedied by this procedure if the state legislatures had been accustomed to thinking of it as a safety net provided by the Founders to protect the states. It is likely that this procedure may become more popular in the future. There are already a number of amendments pending on the basis of state conventions. One of them is the Balanced Budget Amendment. Another is the Prayer Amendment.

Must Congress Call a Convention?

One final question might be raised concerning the possibility that the Congress might refuse to call a convention even

though two-thirds of the states had requested it. Alexander Hamilton addressed this question and said that the wording in the Constitution does not give the Congress the option of refusing to call the convention once the required number of states have requested it. He wrote:

"By the fifth article of the plan, the Congress will be *obliged* 'on the application of the legislatures of two-thirds of the states to call a convention for proposing amendments which *shall be valid*, to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three-fourths of the states, or by conventions in three-fourths thereof.' The words of this article are peremptory. The Congress '*shall* call a convention.' Nothing in this particular is left to the discretion of that body.... We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority."[32]

PROVISION 207
From Article V.1

No amendment to the Constitution can alter the reservation set forth in Article I, section 9, clause 4, which states that there will be no restriction on the importation of slaves before 1808.

This provision gave the southern states the RIGHT to be protected from any alteration of the previous compromise, which postponed federal intervention in prohibiting the importation of slaves until after 1808.

The states which depended on the slavery system were determined to postpone the enforcement of any federal laws on the subject of slavery for twenty years. Having previously agreed that the federal government could prohibit the importation of slaves after 1808, they did not want the amendment clause of the constitution to be used to contravene the prior agreement. This is the reason for the present provision.

To gain some idea of the depth of feeling concerning this subject, we have the following report on the words of John Rutledge of South Carolina:

Slavery was to be preserved inviolate until at least 1808.

"Said he never could agree to give a power by which the articles relating to slaves might be altered by the states not interested in that property, and prejudiced against it. In order to obviate this objection, these words were added to the proposition: 'provided that no amendments which may be made prior to the year 1808 shall in any manner affect the [slavery compromise].'"[33]

PROVISION

208

From Article V.1

No amendment to the Constitution can deprive the states of equal representation and equal voting rights in the Senate.

This provision gave each state the RIGHT to be protected from an amendment designed to deprive the states of equal representation and equal voting rights in the Senate.

This is the provision which made the entire Constitution acceptable to the smaller states and will always be jealously guarded by the smaller states.

The great concern of the smaller states has always been the fear that the states with larger populations would use the strength of numbers to gradually consolidate all power in their hands. James Iredell of North Carolina explained why it was so important to prevent "equality in the Senate" from being changed by an amendment:

"In order that no consolidation should take place, it is provided that no state shall, by any amendment or alteration, be ever deprived of an equal suffrage in the Senate without its own consent."[34]

James Madison of Virginia emphasized the same point:

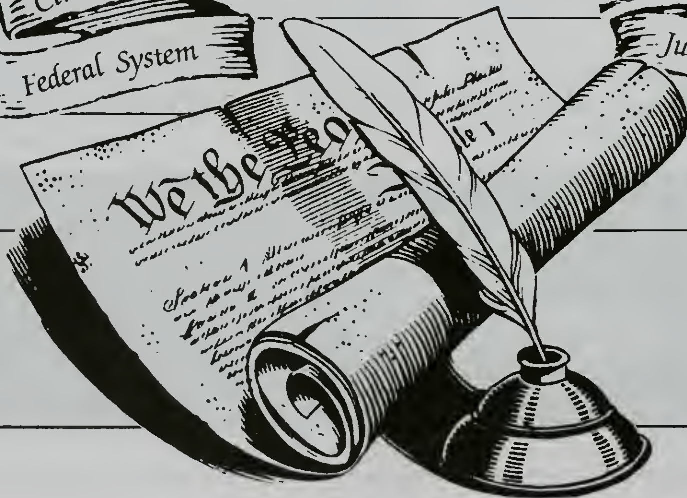
"The exception in favor of the equality of suffrage in the Senate was probably meant as a palladium to the residuary sovereignty of the States, implied and secured by that principle of representation in one branch of the legislature."[35]

Nevertheless, a recently proposed amendment to the Constitution which was actually passed by the Congress would have violated the substance of this clause. It would have allowed the District of Columbia, which is really the city of Washington, to have two Senators and one Representative. To give a city representation as though it were a state would certainly violate the "equal representation" provision of this clause. It also would have probably triggered an avalanche of requests from a number of other major cities demanding representation.

Fortunately, few of the states ratified this proposed amendment. Therefore the seven-year time limit expired and it died.

A recently proposed amendment to the Constitution would have given the District of Columbia equal representation in Congress.

1. *Federalist Papers,* No. 42.
2. Madison, p. 503.
3. Ibid.
4. 6 U.S. 546, 550.
5. *Federalist Papers,* No. 80.
6. Madison, p. 481.
7. Elliot, 4:176.
8. Northwest Ordinance of 1787, in Adler et al., *The Annals of America,* 3:194–96.
9. *Federalist Papers,* No. 43.
10. Madison, p. 488.
11. Ibid., pp. 488–89.
12. Ibid., p. 491.
13. Ibid.
14. 7 Howard 42.
15. 158 U.S. 564.
16. Elliot, 2:482.
17. Ibid., pp. 99–100.
18. Ibid., 4:67.
19. Ibid., p. 195.
20. *Federalist Papers,* No. 43.
21. Elliot, 3:441.
22. *Federalist Papers,* No. 43.
23. Madison, p. 280.
24. Ibid., p. 281.
25. *Federalist Papers,* No. 28.
26. Ibid., No. 14.
27. Elliot, 2:116–17.
28. Ibid., 4:176–77.
29. *Federalist Papers,* No. 43.
30. Ibid., No. 49.
31. Madison, p. 539.
32. *Federalist Papers,* No. 85.
33. Madison, p. 540.
34. Elliot, 4:177.
35. *Federalist Papers,* No. 43.


E PLURIBUS
UNUM
CONSTITUTION
OF
THE
UNITED STATES
Popular Sovereignty
Representative System
Separation of Powers
Civilian Supremacy
Limited Government
Federal System
Judicial Review
We the

CHAPTER

THE FINISHING TOUCHES

Finally we come to the wrapping-up stage where the Founders wanted to incorporate the final provisions required for their system of a "divided, balanced, limited" government.

First of all, they wished to clarify, for the benefit of their creditors, that the new government would honor all of the obligations of the original government under the Articles of Confederation. Furthermore, they intended to honor not only the Revolutionary War debts of the national government, but those of the states as well.

Another matter which required clarification was the supremacy of the federal Constitution, the federal treaties, and the federal laws over state constitutions and state laws. The laws of the nation must necessarily become the supreme law of the land.

There was also the matter of having all officeholders take a sacred oath to uphold the Constitution of the United States. Americans were still learning how to become dual citizens—citizens of their individual states and citizens of the Union. The oath was designed to unify the public servants on both the state and the federal level as patrons of the Constitution.

As for ratification, the Founders were going to put the Constitution into operation as soon as three-fourths of the states had ratified it. Thus, nine states were all that would be necessary to launch the new government on its historic voyage.

PROVISION

209

From Article VI.1

All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the Articles of Confederation.

This provision gave all creditors of the United States the RIGHT to full payment of debts and the fulfillment of all obligations contracted by the government before the new Constitution was adopted.

Considering the circumstances, this was a monumental undertaking, but it was the key to the early success of the tiny new nation. Alexander Hamilton, who became the first Secretary of the Treasury, put the debt of the Union at $11,710,387 owed to foreign banks and creditors (primarily in France and Holland) and $42,414,084 owed to banks and contractors in the United States. The states themselves owed about $25 million for expenditures in the common defense, and all of this amounted to a total indebtedness of about $79 million.

The above provision in the Constitution promised to pay it all.

Creditors Surprised

This came as a great surprise to many creditors, who were well aware of the common practice in Europe of reorganizing a government so that the new government would not have to pay the debts of the old one. The Founders were of a different mettle.

This provision gave foreign bankers sufficient confidence in the new government to help monetize this huge national debt and to assist in underwriting the new Bank of the United States with goverment bonds (IOUs on the American taxpayers) as its principal assets. The structure of this bank was so faulty that it alarmed Thomas Jefferson, but it was intended only as an emergency measure for a period of twenty years in order to give the American economy enough stability to get the new nation on its fiscal

feet. To this extent it was a financial lifesaver and did what it was designed to do.

Washington Surprised

Even before everything was in place, this provision in the Constitution was sufficient to inspire respect and confidence in the new nation. Almost immediately it started the wheels of industry and commerce turning again. As President Washington saw what was happening, he could scarcely believe it. He saw the bankrupt United States experience a miracle of recovery at a pace he never would have believed possible.

On June 3, 1790, Washington wrote the following to the famous Frenchman Marquis de LaFayette, who had been with him during most of the Revolutionary War:

"You have doubtless been informed from time to time of the happy progress of our affairs. The principle difficulties... seem in a great measure to have been surmounted.... Our revenues have been considerably more productive than it was imagined they could be.... I mention this to show the spirit of enterprise that prevails."[1]

On July 19, 1791, Washington said in a letter to Catherine Macaulay Graham:

"The United States enjoys a scene of prosperity and tranquility under the new government that could hardly have been hoped for."[2]

On July 20, 1791, Washington wrote to David Humphrey:

"Tranquility reigns among the people, with that disposition towards the general government which is likely to preserve it.... Our public credit stands on that high ground which three years ago it would have been considered as a species of madness to have foretold."[3]

A Different Story in France

Unfortunately, at the same time the ministers of King Louis XVI in France were not so fortunate. They declined to listen to Jefferson, Franklin, and others who had negotiated the numerous loans and acquired voluminous assistance from France during the Revolutionary War.

The Americans knew the French government was in a state of bankruptcy, partly because the king had expended a fortune building expensive fleets and providing fully equipped and costly military requirements from France to help the Americans win their independence. Americans hoped the French could somehow weather the crisis.

However, the king and his ministers rejected the advice of the Americans. Both the king and his advisers depended upon the traditional approach of exorbitant taxes on a people who were already reduced to dire poverty in a land of plenty. This exploded into a revolution during 1789. Nevertheless, for two years the French Revolution had all of the possibilities of settling down into a peaceful, limited monarchy similar to England. Tragically, the duplicity of the king, plus the invasion of the country by other kings who vowed to restore Louis XVI to his former prerogatives, resulted in George Jacques Danton and the radical commune getting hold of the government on January 21, 1793.

Within a short time both the king and the queen went to the guillotine. So did about four thousand members of the leading families of France. Before long, the French found themselves caught up in a tornado of terror and violence which finally blew them into the arms of Napoleon with his vast array of imperialistic ambitions. What started out as merely a

tax rebellion ended in a dictatorship and twenty-three years of devastating war. It all came to a sudden and cataclysmic conclusion when Napoleon suffered a disastrous defeat at Waterloo.

America's Narrow Escape

A similar pattern might have erupted in America if wiser heads had not prevailed. In 1786, Shays's Rebellion in Massachusetts demonstrated that Americans were already taxed to the limit. After eight miserable years of war followed by inflation, depression, and threatened secession by some of the states, the people needed relief, not more taxes.

Nevertheless, the American leaders were determined to somehow pay their legitimate debts. The mere announcement that this would be their policy was sufficient to revive the sagging spirits of business and industry.

Here are the Founders' answers to a number of questions which were raised:

• *Should the new federal government abrogate the debts of the old government, according to the European practice?*

The United States Surprised Its Creditors by Not Abrogating Its Debts

Madison: "Inserted, among other reasons, for the satisfaction of the foreign creditors of the United States, who cannot be strangers to the pretended doctrine that a change in the political form of civil society has the magical effect of dissolving its moral obligations."[4]

• *Is this provision enforceable through the courts?*

Enforcement Depends Entirely on the Integrity of Congress

Nicholas: "By it all contracts will be as valid, and only as valid, as under the Old Confederation. The new government will give the holders the same power of recovery as the old one. There is no law under the existing system which gives power to any tribunal to enforce the payment of such claims. On the will of Congress alone the payment depends. The Constitution expressly says that they be only as binding as under the present [Articles of] Confederation [which had no judicial system]. Cannot they decide according to real equity? Those who have this money must make application to Congress for payment. Some positive regulation must be made to redeem it. It cannot be said that they have power of passing a law to enhance its value. They cannot make a law that that money shall no longer be at one for one; for, though they have power to pay the debts of the United States, they can only pay the real debts; and this is no further a debt than it was before. Application must, therefore, be made by the holders of that money to Congress, who will make the most proper regulation to discharge its real and equitable, and not its nominal value."[5]

• *Why were the debts of the states included?*

State Debts Part of the Common Defense

Rutledge: "He then moved . . . to consider the necessity and expediency of the United States assuming all the state debts. A regular settlement between the Union and the several states would never take place. The assumption would be just, as the state debts were contracted in the

common defense. It was necessary, as the taxes on imports, the only sure source of revenue, were to be given up to the Union. It was politic, as by disburdening the people of the state debts, it would conciliate them to the plan."[6]

King: "The state creditors, an active and formidable party, would otherwise be opposed to a plan which transferred to the Union the best resources of the states without transferring the state debts at the same time. The state creditors had generally been the strongest foes to the impost plan."[7]

PROVISION

210

From Article VI.2

The supreme law of the land shall consist of the Constitution, the laws passed by Congress, and the treaties which have been or shall be passed by Congress.

This provision gave every American the RIGHT to the protection of the Constitution, the laws, and the treaties entered into by the United States. This is known as the "supremacy clause."

Three Kinds of Republics

As we have mentioned earlier, there are three kinds of republics—each one depending upon the power base where its supremacy lies:

1. The unitary republic—such as England—consists of a centralized government operating under what is known as "parliamentary supremacy."
2. The confederation-of-states type of republic is the combining of several independent states similar to the Netherlands, the German states, and the United States under the Articles of Confederation. In this type of confederated republic the system emphasizes "state supremacy."
3. Finally, the Founders invented a new kind of republic based on "constitutional supremacy."

To appreciate the difference between the first and third types, it is significant to note that the British Parliament can pass any law it wishes on any subject. It even passes on the constitutionality of its own laws. Furthermore, it is responsible for the well-being of the entire kingdom, top to bottom. It is therefore called a "unitary republic." The United States, however, operates under the numerous restrictions of the Constitution. No matter what Congress or the states might wish to do, they have to stay within the boundaries of the Constitution. That is why the Founders are credited with the invention of a new kind of republic based on "constitutional supremacy." This makes the "supremacy clause" the cornerstone of the whole American political structure."

Purposes of the Supremacy Clause

The purpose of the supremacy clause was to prevent the states from invading those areas which had been specifically delegated to the federal government. The Founders were equally concerned with the possibility of the federal branches of

government invading the supreme authority reserved to the states or trying to acquire exclusive domination of areas in which there was joint jurisdiction. Either case involved that ugly word "usurpation," which all of the Founders so vigorously warned against.

The Founders addressed the following questions during the debates:

- *Why is this provision considered so important?*

There Must Be One Supreme Standard

Johnston: "The Constitution must be the supreme law of the land; otherwise, it would be in the power of any one state to counteract the other states and withdraw itself from the union. The laws made in pursuance thereof by Congress ought to be the supreme law of the land; otherwise, any one state might repeal the laws of the Union at large. Without this claim, the whole Constitution would be a piece of blank paper. Every treaty should be the supreme law of the land; without this, any one state might involve the whole Union in war.... I do not know a word in the English language so good as the word *pursuance,* to express the idea meant and intended by the Constitution.... When Congress makes a law in virtue of their constitutional authority, it will be an actual law.... Every law consistent with the Constitution will have been made in pursuance of the powers granted by it. Every usurpation or law repugnant to it cannot have been made in pursuance of its powers. The latter will be nugatory and void.... Are laws as immutable as constitutions? Can any thing be more absurd than assimilating the one to the other? The idea is not warranted by the constitution, nor consistent with reason."[8]

Supremacy of Federal Government Insures Concerted Action

Jay: "The *just* causes of war, for the most part, arise either from violations of treaties or from direct violence....

"It is of high importance to the peace of America that she observe the laws of nations....

"Under the national government, treaties and articles of treaties, as well as the laws of nations, will always be expounded in one sense and executed in the same manner—whereas adjudications on the same points and questions in thirteen states, or in three or four confederacies, will not always accord or be consistent; and that, as well from the variety of independent courts and judges appointed by different and independent governments as from the different local laws and interests which may affect and influence them."[9]

Supreme Law Imposes Universal Duty

McKean: "Congress have the power of making laws upon any subject over which the proposed plan gives them a jurisdiction, and that those laws thus made in pursuance of the constitution, shall be binding upon the states. With respect to treaties, I believe there is no nation in the world in which they are not considered as the supreme law of the land, and consequently, obligatory upon all judges and magistrates. They are a common concern, and obedience to them ought to be a common duty. As, indeed, the interest of all the states must be uniformly in the contemplation of Congress, why should not that body be authorized to legislate for all?"[10]

- *How comprehensive is this provision?*

Federal Laws Become the Supreme Laws of Every State

Iredell: "What is the meaning of this, but that, as we have given power, we will support the execution of it?...It is saying no more than that, when we adopt the government, we will maintain and obey it.... Then, when the Congress passes a law consistent with the Constitution, it is to be binding on the people. If Congress, under pretense of executing one power, should, in fact, usurp another, they will violate the Constitution....

"Every power delegated to Congress is to be executed by laws made for that purpose. It is necessary to particularize the powers intended to be given, in the Constitution, as having no existence before; but, after having enumerated what we give up, it follows, of course, that whatever is done, by virtue of that authority, is legal without any new authority or power. The question, then, under this clause, will always be whether Congress has exceeded its authority. If it has not exceeded it, we must obey, otherwise not. This Constitution, when adopted, will become a part of our state constitution; and the latter must yield to the former only in those cases where power is given by it. It is not to yield to it in any other case whatever.... It appears to me merely a general clause, the amount of which is that, when they pass an act, if it be in the execution of a power given by the Constitution, it shall be binding on the people, otherwise not."[11]

• *Is there any restriction on the supremacy clause?*

Supreme Only Within Its Delegated Powers

W. Davie: "This Constitution, as to the powers therein granted, is constantly to be the supreme law of the land.... It is not the supreme law in the exercise of a power not granted. It can be supreme only in cases consistent with the powers specially granted, and not in usurpations. If you grant any power to the federal government, the laws made in pursuance of that power must be supreme and uncontrolled in their operation."[12]

• *How does the supremacy clause affect the individual states?*

Federal Law Paramount to That of the States

MacLaine: "The laws of the Union are to be the supreme laws of the land.... Shall a part control the whole? ...

"Every gentleman must see the necessity for the laws of the Union to be paramount to those of the separate states."[13]

States Still Supreme in the Realm of Their Independent Powers Not Delegated

Hamilton: "The word *supreme* imports no more than this—that the Constitution, and laws made in pursuance thereof, cannot be controlled or defeated by any other law. The acts of the United States, therefore, will be absolutely obligatory as to all the proper objects and powers of the general government. The states, as well as individuals, are bound by these laws; but the laws of Congress are restricted to a certain sphere, and when they depart from this sphere, they are no longer supreme or binding. In the same manner the states have certain independent powers, in which their laws are supreme; for example, in making and executing laws concerning the punishment of certain crimes, such as murder, theft, etc., the states cannot be controlled. With respect to certain other objects, the powers of the

two governments are concurrent, and yet supreme. I instanced yesterday a tax on a specific article. Both might lay the tax; both might collect it without clashing or interference. If the individual should be unable to pay both, the first seizure would hold the property. Here the laws are not in the way of each other; they are independent and supreme."[14]

Treaties Binding on States As a Supreme Law

Corbin: "But, say gentlemen, all treaties made under this Constitution are to be the supreme law.... Is it not necessary that they should be binding on the states? Fatal experience has proved that treaties would never be complied with, if their observance depended on the will of the states; and the consequences would be constant war. For if any one state could counteract any treaty, how could the United States avoid hostility with foreign nations? Do not gentlemen see the infinite dangers that would result from it, if a small part of the community could drag the whole confederacy into war?"[15]

Madison: "I think the argument of the gentlemen [Corbin] who restrained the supremacy of these to the laws of particular states, and not to Congress, is rational. Here the supremacy of a treaty is contrasted with the supremacy of the laws of the states. It cannot be otherwise supreme. If it does not supercede their existing laws, as far as they contravene its operation, it cannot be of any effect. To counteract it by the supremacy of the state laws would bring on the Union the just charge of national perfidy, and involve us in war."[16]

Federal Law Cannot Invade States' Rights

Hamilton: "A LAW, by the very meaning of the term, includes supremacy. It is a rule which those to whom it is prescribed are bound to observe. This results from every political association. If individuals enter into a state of society, the laws of that society must be the supreme regulator of their conduct. If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers entrusted to it by its constitution, must necessarily be supreme over those societies and the individual of whom they are composed. It would otherwise be a mere treaty, dependent on the good faith of the parties, and not a government, which is only another word for *political power and supremacy*. But it will not follow from this doctrine that acts of the larger society which are *not pursuant* to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such. Hence we perceive that the clause which declares the supremacy of the laws of the Union, like the one we have just before considered, only declares a truth which flows immediately and necessarily from the institution of a federal government. It ...*expressly* confines this supremacy to laws made *pursuant to the Constitution;* which I mention merely as an instance of caution in the convention; since that limitation would have been to be understood, though it had not been expressed.

"Though a law, therefore, for laying a tax for the use of the United States would

be supreme in its nature and could not legally be opposed or controlled, yet a law for abrogating or preventing the collection of a tax laid by the authority of a state (unless upon imports and exports) would not be the supreme law of the land, but a usurpation of power not granted by the Constitution."[17]

• *Why were treaties made part of the supreme law of the land?*

Treaties Are an Extension of Constitutional Power

MacLaine: "Treaties were the supreme law of the land in all countries, for the most obvious reasons—that laws, or legislative acts, operated upon individuals, but that treaties acted upon states—that, unless they were the supreme law of the land, they could have no validity at all....

"When treaties are made, they become as valid as legislative acts. I apprehend that every act of the government, legislative, executive, or judicial, if in pursuance of a constitutional power, is the law of the land.... Every thing is the law of the land, let it come from what power it will, provided it be consistent with the Constitution....

"Suppose this Constitution is adopted, and a treaty made; that treaty is the law of the land. Why? Because the Constitution grants the power of making treaties."[18]

• *Does this include merely current treaties?*

It Includes Treaties Present and Future

Madison and G. Morris: "After the words 'all treaties made' were inserted ... the words 'or which shall be made.' This insertion was meant to obviate all doubt concerning the force of treaties preexisting, by making the words 'all treaties made' to refer to them, as the words inserted would refer to future treaties."[19]

• *Are treaties contracts or laws?*

Treaties Are Contracts Transformed into Laws

Wilson: "Under this Constitution, treaties will become the supreme law of the land; nor is there any doubt but the Senate and President possess the power of making them. But though the treaties are to have the force of laws, they are in some important respects very different from other acts of legislation. In making laws, our own consent alone is necessary. In forming treaties, the concurrence of another power becomes necessary. Treaties, sir, are truly contracts, or compacts, between the different states, nations, or princes who find it convenient or necessary to enter into them."[20]

Treaties are part of the supreme law of the land. Here, a decade before the Constitution was ratified, Benjamin Franklin finalizes a treaty of friendship, commerce, and alliance between France and the United States.

PROVISION 211

From Article VI.2

The judges in every state shall be bound to enforce the supreme law of the land, anything in their state constitutions or their state laws to the contrary notwithstanding.

This provision gives the American people the RIGHT to enjoy all of the privileges and immunities guaranteed by the supreme law of the land, regardless of what any state might try to do to circumvent it.

The only confusion which has arisen in connection with this provision is with reference to the word *constitution*. Some years ago it was argued by advocates of the United Nations Treaty that this provision allowed a treaty such as the U.N. Treaty to supersede the national Constitution itself.

Notice how the provision reads in Article VI, section 2. It says:

"And the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

Even the most casual reading of this provision should clearly demonstrate that it is talking about the state constitutions, not the national Constitution.

1. Notice, first of all, that this instruction is directed to the judges of the states.
2. Notice also that it is referring to the "constitution or laws OF ANY STATE." It is obviously associating the state constitutions and the laws of the states in a common reference.
3. Finally, we are assured that this is a correct interpretation by another provision in the Constitution itself: if a treaty could change, alter, or otherwise amend the Constitution, it would nullify and completely circumvent the entire amendment process provided in Article V.

Just in case there might still be some questions remaining, this subject was discussed during the debates with the Founders themselves providing answers.

• *Is this provision referring to the state constitutitons or the federal Constitution?*

This Provision Refers to State Constitutions and State Laws

Nicholas: "They can, by this, make no treaty which shall be repugnant to the spirit of the Constitution, or inconsistent with the delegated powers. The treaties they make must be under the authority of the United States, to be within their province. It is sufficiently secured because it only declares that, in pursuance of the powers given, they shall be the supreme law of the land, notwithstanding any thing in the constitution or laws of particular states."[21]

Why State Constitutions Must Be Subordinate to the Federal Constitution, Laws, and Treaties

Madison: "Suppose . . . the supremacy of

the state constitutions had been left complete....

"The world would have seen, for the first time, a system of government founded on an inversion of the fundamental principles of all government; it would have seen the authority of the whole society everywhere subordinate to the authority of the parts; it would have seen a monster in which the head was under the direction of the members."[22]

• *How should the states interpret the supremacy clause?*

State Constitutions and Laws Are "Auxiliary" to the Great National System

Hamilton: "The laws of the Confederacy as to the *enumerated* and *legitimate* objects of its jurisdiction will become the SUPREME LAW of the land; to the observance of which all offices, legislative, executive, and judicial in each state will be bound by the sanctity of an oath. Thus, the legislatures, courts, and magistrates of the respective members will be incorporated into the operations of the national government *as far as its just and constitutional authority extends;* and will be rendered auxiliary to the enforcement of its laws."[23]

PROVISION 212

From Article VI.3

All elected representatives and all officers and administrators of both the United States and the individual states shall take an oath or affirmation that they shall support this Constitution.

This provision gave all Americans the RIGHT to have only those legislators and administrators in charge of their affairs who have made a solemn commitment, under oath, to support the constitutional principles of the United States.

At the time the Constitution was adopted there were many Americans who had a much stronger sense of loyalty toward their own states than toward the Union. In their minds the national government was not yet the "supreme" government of the land. This provision was designed to remind all officials, both state and federal, that their first loyalty was to the federal Constitution.

The presidential oath is set forth in the Constitution as follows:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

It is interesting, as we have mentioned earlier, that when Washington was asked

to take the oath at the time of his inauguration on April 30, 1789, he did so, and then added the words, "So help me God!" This was not an official part of the oath, but every newly elected President thereafter did the same. In the midst of the war between the states, Congress decided to make this an official part of the oath. Therefore, on July 2, 1862, the official oath had the words added at the end, "So help me God."

All United States officers lower in rank than the President take oaths similar to the presidential oath. However, an officer being sworn into an office of a particular state promises to uphold and defend the state constitution as well as the national Constitution.

The military oath is somewhat more detailed and elaborate than the presidential oath. It states:

"I do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the regulations and the uniform Code of Military Jusice."

It should be mentioned that a few religious groups object to using the word, "swear" in taking the oath because of the scripture which says, "Swear not at all" (Matthew 5:34). All such individuals are therefore allowed to say that they "affirm" the contents of the oath. Nevertheless, under the law an affirmation is as binding as an oath and enforced as such.

The best known oath is the judicial oath required of all who testify in the American courts. It is read to the witness as follows:

"Do you solemnly swear (or affirm) that you will tell the truth, the whole truth, and nothing but the truth, so help you God?"

The response must be "I do," or the witness will not be allowed to give testimony in the court.

Questions and answers during the debates included the following:

• *What is the true significance of an oath?*

The Sanctity of the Oath

Iredell: "According to the modern definition of an oath, it is considered a 'solemn appeal to the supreme being, for the truth of what is said, by a person who believes in the existence of a supreme being and in a future state of rewards and punishments according to that form which will bind his conscience most.' It was long held that ... none but Jews and Christians could take an oath; and heathens were altogether excluded.... Men at length considered that there were many virtuous men in the world who had not had an opportunity of being instructed either in the Old or New Testament, who yet very sincerely believed in a supreme being, and in a future state of rewards and punishments.... Indeed, there are few people so grossly ignorant or barbarous as to have no religion at all. And if none but Christians or Jews could be examined upon oath, many innocent persons might suffer for want of the testimony of others. In regard to the form of an oath, that ought to be governed by the religion of the person taking it.... A man who was a material witness in a cause refused to swear upon the book and was admitted to swear with his uplifted hand. The jury had a difficulty in crediting him; but the chief justice told them he had, in his opinion, taken as strong an oath as any of the other witnesses....

"In England...a person...was admitted to take an oath according to the rites of his own country, though he was a heathen.... Not believing either in the Old or New Testament, he could not be sworn in the accustomed manner, but was sworn according to the form of the Gentoo [Hindu] religion, which he professed, by touching the foot of a priest. It appeared that, according to the tenets of this religion, its members believed in a supreme being and in a future state of rewards and punishments. It was accordingly held by the judges...that it was probable those of that religion were equally bound in conscience by an oath according to their form of swearing, as they themselves were by one of theirs; and that it would be a reproach to the justice of the country if a man, merely because he was of a different religion from their own, should be denied redress of an injury he had sustained. Ever since this great case it has been universally considered that, in administering an oath, it is only necessary to inquire if the person who is to take it believes in a supreme being and in a future state of rewards and punishments. If he does, the oath is to be administered according to that form which it is supposed will bind his conscience most. It is, however, necessary that such a belief should be entertained, because otherwise there would be nothing to bind his conscience most. It is, however, necessary that such a belief should be entertained, because otherwise there would be nothing to bind his conscience that could be relied on; since there are many cases where the terror of punishment in this world for perjury would not be dreaded.... We may, I think, very safely leave religion to itself; and as to the form of the oath, I think this may well be trusted to the general government, to be applied on the principles I have mentioned."[24]

The Oath Does Not Cover Unconstitutional Elements

MacLaine: "Can any government exist without fidelity in its officers? Ought not the officers of every government to give some security for the faithful discharge of their trust? The officers are only to be sworn to support the Constitution, and therefore will only be bound by their oath so far as it shall be strictly pursued. No officer will be bound by his oath to support any act that would violate the principles of the Constitution."[25]

• *Why were the state constitutions not included in the federal oath?*

Federal Officers Not Subordinate to State Constitutions

Madison: "It has been asked why it was thought ... unnecessary that a like oath should be imposed on the officers of the United States in favor of the state constitutions....

"The members of the federal government will have no agency in carrying the state constitutions into effect. The members and officers of the state governments, on the contrary, will have an essential agency in giving effect to the federal Constitution. The election of the President and Senate will depend, in all cases, on the legislatures of the several states. And the election of the House of Representatives will equally depend on the same authority in the first instance; and will, probably, forever be conducted by the officers and according to the laws of the states."[26]

• *Why are state officers asked to take the oath?*

The Oath Ties State Officers to the National Government

Randolph: "Considered it necessary to

prevent that competition between the national Constitution and laws, and those of the particular states, which had already been felt. The officers of the states are already under oath to the states. To preserve a due impartiality, they ought to be equally bound to the national government. The national authority needs every support we can give it. The executive and judiciary of the states, notwithstanding their nominal independence on the state legislatures, are in fact so dependent on them that unless they be brought under some tie to the national system, they will always lean too much to the state systems, whenever a contest arises between the two."[27]

Oath Codifies the Reality of the Union

Gerry: "Hitherto the officers of the two governments had considered them as distinct from, not as parts of the general system, and had in all cases of interference given a preference to the state governments. The proposed oaths will cure that error."[28]

PROVISION

213

From Article VI.3

No religious test shall ever be required as a qualification for any office or public trust in the United States.

This provision allows any American citizen the RIGHT to serve in any office or position of trust in the United States without reference to his or her religious beliefs or affiliation.

Many of the early colonies were established by groups of people with strong religious convictions and those serving in public office were required to commit themselves to certain religious tenets. This automatically excluded from public offices those who had contrary views. For this reason the framers of the Constitution provided that no "religious test" could be required for an office in the national government (where a great variety of beliefs and religious tenets—even atheism—would be represented).

The Founders responded to a number of questions related to this provision.

• *What is wrong with a religious test?*

Religious Test Deprives Some of Their Basic Civil Rights

Shute: "To establish a religious test as a qualification for offices in the proposed federal Constitution, it appears to me, sir, would be attended with injurious consequences to some individuals, and with no advantage to the *whole.*

"By the injurious consequences to individuals, I mean that some, who in every other respect are qualified to fill some important post in government, will be excluded by their not being able to stand the religious test; which I take to be a privation of part of their civil rights.

"Nor is there to me any conceivable ad-

vantage, sir, that would result to the whole from such a test. Unprincipled and dishonest men will not hesitate to subscribe to *any thing* that may open the way for their advancement, and put them into a situation the better to execute their base and iniquitous designs. Honest men alone, therefore, however well qualified to serve the public, would be excluded by it, and their country be deprived of the benefit of their abilities....

"Far from limiting my charity and confidence to men of my own denomination in religion, I suppose, and I believe, sir, that there are worthy characters among men of every denomination—among the Quakers, the Baptists, the Church of England, the Papists; and even among those who have no other guide, in the way to virtue and heaven, than the dictates of natural religion."[29]

Religious Tests an Engine of Tyranny

Backus: "Nothing is more evident, both in reason and the Holy Scriptures, than that religion is ever a matter between God and individuals; and, therefore, no man or men can impose any religious test without invading the essential prerogatives of our Lord Jesus Christ. Ministers first assumed this power under the Christian name; and then Constantine approved of the practice, when he adopted the profession of Christianity, as an engine of state policy. And let the history of all nations be searched from that day to this, and it will appear that the imposing of religious tests hath been the greatest engine of tyranny in the world."[30]

• *Why was it necessary to include this provision?*

This Clause Necessary to Insure Religious Liberty

Iredell: "I consider the clause under consideration as one of the strongest proofs that could be addressed, that it was the intention of those who formed this system to establish a general religious liberty in America.... They [Congress] certainly have no authority to interfere in the establishment of any religion whatsoever.... Is there any power given to Congress in matters of religion? Can they pass a single act to impair our religious liberty? If they could, it would be a just cause of alarm. If they could, sir, no man would have more horror against it than myself. Happily, no sect here is superior to another. As long as this is the case, we shall be free from those persecutions and distractions with which other countries have been torn. If any future Congress should pass an act concerning the religion of the country, it would be an act which they are not authorized to pass, by the Constitution, and which the people would not obey. Everyone would ask, 'Who authorized the government to pass such an act? It is not warranted by the Constitution, and is barefaced usurpation.'

"How is it possible to exclude any set of men, without taking away that principle of religious freedom which we ourselves so warmly contend for? This is the foundation on which persecution has been raised in every part of the world.... If you admit the least difference, the door to persecution is opened.... But it is never to be supposed that the people of America will trust their dearest rights to persons who have no religion at all, or a religion materially different from their own. It would be happy for mankind if religion was permitted to take its own course and maintain itself by the excellence of its

own doctrines. The divine Author of our religion never wishes for its support by worldly authority....

"This article is calculated to secure universal religious liberty, by putting all sects on a level—the only way to prevent persecution."[31]

• *But are we likely to end up with a collection of infidels in high office?*

Infidels in High Office Unlikely Unless People Become Infidels Themselves

Spaight: "I do not suppose an infidel or any such person will ever be chosen to any office unless the people themselves be of the same opinion."[32]

Members of All Religions Eligible for Public Office in the United States

Johnston: "It appears to me that it would have been dangerous if Congress could intermeddle with the subject of religion. True religion is derived from a much higher source than human laws. When any attempt is made by any government to restrain men's consciences, no good consequence can possibly follow. It is apprehended that Jews, Mahometans, pagans, etc., may be elected to high offices under the government of the United States. Those who are Mahometans, or any others who are not professors of the Christian religion, can never be elected to the office of President or other high office, but in one of two cases. First, if the people of America lay aside the Christian religion altogether, it may happen. Should this unfortunately take place, the people will choose such men as think as they do themselves. Another case is, if any person of such descriptions should, notwithstanding their religion, acquire the confidence and esteem of the people of America by their good conduct and practice of virtue, they may be chosen."[33]

PROVISION 214

From Article VII

The ratification of this Constitution by nine states will put it into full force and effect.

This provision gave the people the RIGHT to have the Constitution go into effect as soon as nine states had ratified it.

The Founders felt it was a mistake to follow the requirements of the Articles of Confederation which prevented any changes in government without unanimous consent. Such a provision gave any one state a unilateral veto over all of the other states.

By allowing the Constitution to go into effect as soon as nine states had ratified it, the Founders took a chance on the possibility that one or more of the states might repudiate its earlier covenant of "perpetual union" and remain outside the Union. Nevertheless, they were willing to take this chance in order to get on with the highly volatile business of trying to set up a new government.

Since the ratification provision required only nine states to ratify in order for the constitutional government to become an official entity, it turned out that the Constitution was in operation before two of the states (North Carolina and Rhode Island) had ratified it. North Carolina finally got around to ratifying the Constitution on November 21, 1789, but it was not until May 29, 1790, that Rhode Island ratified it.

Two interesting questions came up during the debates.

• *Why were nine states required for ratification instead of some other number?*

Approval of Nine States Already Required for Major Decisions in Congress

Randolph: "Was for filling the blank with 'nine,' that being a respectable majority of the whole, and being a number made familiar by the constitution of the existing Congress."[34]

Mason: "Was for preserving ideas familiar to the people. Nine states had been required in all great cases under the Confederation and that number was on that account preferable."[35]

Butler: "Was in favor of 'nine.' He revolted at the idea that one or two states should restrain the rest from consulting their safety."[36]

• *What if some of the states refused to ratify?*

Nonratifying States Would Remain Outside the Union

King: "Moved to add ... the words 'between the said states' so as to confine the operation of the government to the states ratifying it."[37]

• *Just how significant did the Founders consider their work to be?*

The Constitution of Worldwide Importance

John Fiske, the noted historian, wrote: "Thus after four months of anxious toil, through the whole of a scorching Philadelphia summer, after earnest but sometimes bitter discussion, in which more than once the meeting had seemed on the point of breaking up, a colossal work had at last been accomplished, the results of which were powerfully to affect the whole future career of the human race."[38]

Those who had participated in the Convention knew that they had played a role in a great historical development. As President Monroe later stated:

"The establishment of our institutions forms the most important epoch that history hath recorded. They extend unexampled felicity to the whole body of our fellow-citizens, and are the admiration of other nations. To preserve and hand them down in their utmost purity to the remotest ages will require the existence and practice of virtues and talents equal to those which were displayed in acquiring them. It is ardently hoped and confidently believed that these will not be wanting."[39]

Mission Accomplished

The text of the Constitution closes with these words:

"Done in convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred

and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names." The various state delegates who signed the Constitution included:

George Washington, President and Deputy from Virginia

New Hampshire
John Langdon
Nicholas Gilman

Massachusetts
Nathaniel Gorham
Rufus King

Connecticut
William Samuel Johnson
Roger Sherman

New York
Alexander Hamilton

New Jersey
William Livingston
David Brearley
William Paterson
Jonathan Dayton

Pennsylvania
Benjamin Franklin
Thomas Mifflin
Robert Morris
George Clymer
Thomas Fitzsimons
Jared Ingersoll
James Wilson
Gouverneur Morris

Delaware
George Read
Gunning Bedford, Jr.
John Dickinson
Richard Bassett
Jacob Broom

Maryland
James McHenry
Daniel of St. Thomas Jenifer
Daniel Carroll

Virginia
John Blair
James Madison, Jr.

North Carolina
William Blount
Richard Dobbs Spaight
Hugh Williamson

South Carolina
John Rutledge
Charles Cotesworth Pinckney
Charles Pinckney
Pierce Butler

Georgia
William Few
Abraham Baldwin

Attested by:
William Jackson, Secretary

After the Constitution was signed on September 17, 1787, the convention adjourned. The Constitution was then sent to the states for ratification.

1. Fitzpatrick, *The Writings of George Washington,* 31:44–45.
2. Ibid., pp. 316–17.
3. Ibid., pp. 318–19.
4. *Federalist Papers,* No. 43.
5. Elliot, 3:476.
6. Madison, p. 421.
7. Ibid., p. 422.
8. Elliot, 4:187–88.
9. *Federalist Papers,* No. 3.
10. *Pennsylvania,* p. 277.
11. Elliot, 4:178–79.
12. Ibid., p. 182.
13. Ibid., pp. 181–82.
14. Ibid., 2:362.
15. Ibid., 3:510.
16. Ibid., p. 515.
17. *Federalist Papers,* No. 33.
18. Elliot, 4:28.
19. Madison, p. 469.
20. Elliot, 2:506.
21. Ibid., 3:507.
22. *Federalist Papers,* No. 44.
23. Ibid., No. 27.
24. Elliot, 4:196–98.
25. Ibid., p. 140.
26. *Federalist Papers,* No. 44.
27. Madison, p. 90.
28. Ibid., p. 304.
29. Elliot, 2:118–19.
30. Ibid., p. 148.
31. Ibid., 4:193–96.
32. Ibid., p. 208.
33. Ibid., pp. 198–99.
34. Madison, pp. 495–96.
35. Ibid., p. 498.
36. Ibid., p. 496.
37. Ibid.
38. John Fiske, *The Critical Period of American History, 1783–1789,* The Historical Writings of John Fiske, vol. 12 (Boston: Houghton Mifflin Company, 1916), pp. 304–64.
39. Norton, *The Constitution of the United States,* p. 190.

An announcement of the ratification of the Constitution by the state of Virginia.

POGHKEEPSIE,

July 2d, 1788.

JUST ARRIVED

BY EXPRESS,

The Ratification of the New Conſtitution by the Convention of the State of Virginia, on Wedneſday the 25th June, by a majority of 10; 88 agreeing, and 78 diſſenting to its adoption.

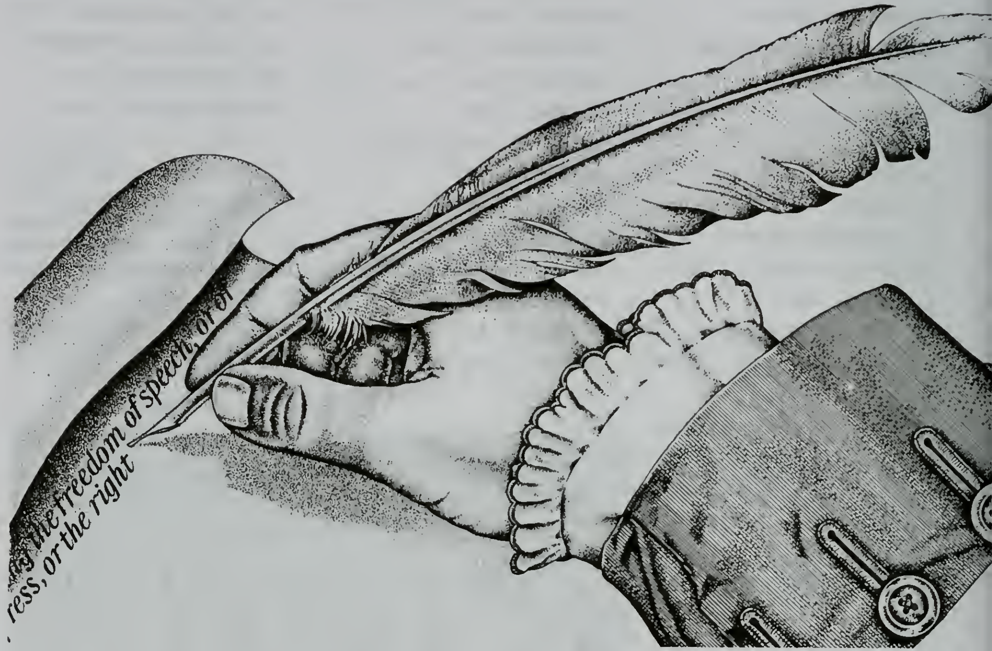
"WE the Delegates of the People of Virginia, duly elected in Purſuance of a Recommendation of the General Aſſembly, and now met in Convention, having fully and fairly inveſtigated and diſcuſſed the Proceedings of the Federal Convention, and being prepared as well as the moſt mature Deliberation will enable us to decide thereon, DO, in the Name and on Behalf of the People of Virginia, declare and make known, that the Powers granted under the Conſtitution being derived from the People of the United States, may be reſumed by them whenſoever the ſame ſhall be perverted to their Injury or Oppreſſion, and that every Power not granted thereby remains with them and at their Will: That therefore no Right, of any Denomination, can be cancelled, abridged, reſtrained or modified by the Congreſs, by the Senate, or Houſe of Repreſentatives, acting in any Capacity, by the Preſident, or any Department or Officer of the United States, except in thoſe inſtances where Power is given by the Conſtitution for thoſe Purpoſes: That among other eſſential Rights, the Liberty of Conſci-

With theſe Impreſſions, with a ſolemn Appeal to the Searcher of Hearts for the Purity of our Intentions, and under the Conviction, that whatſoever Imperfections may exiſt in the Conſtitution, ought rather to be examined in the Mode preſcribed therein, than to bring the UNION into Danger by Delay, with a Hope of obtaining Amendments previous to the Ratification:

We the ſaid Delegates, in the Name and in Behalf of the People of Virginia, do by theſe preſents aſſent to and ratify the Conſtitution, recommended on the 17th day of September, 1787, by the Federal Convention for the Government of the United States; hereby announcing to all thoſe whom it may concern, that the ſaid Conſtitution is binding upon the ſaid People, according to an authentic copy hereunto annexed, in the Words following:"—

[Here comes in the Conſtitution.]

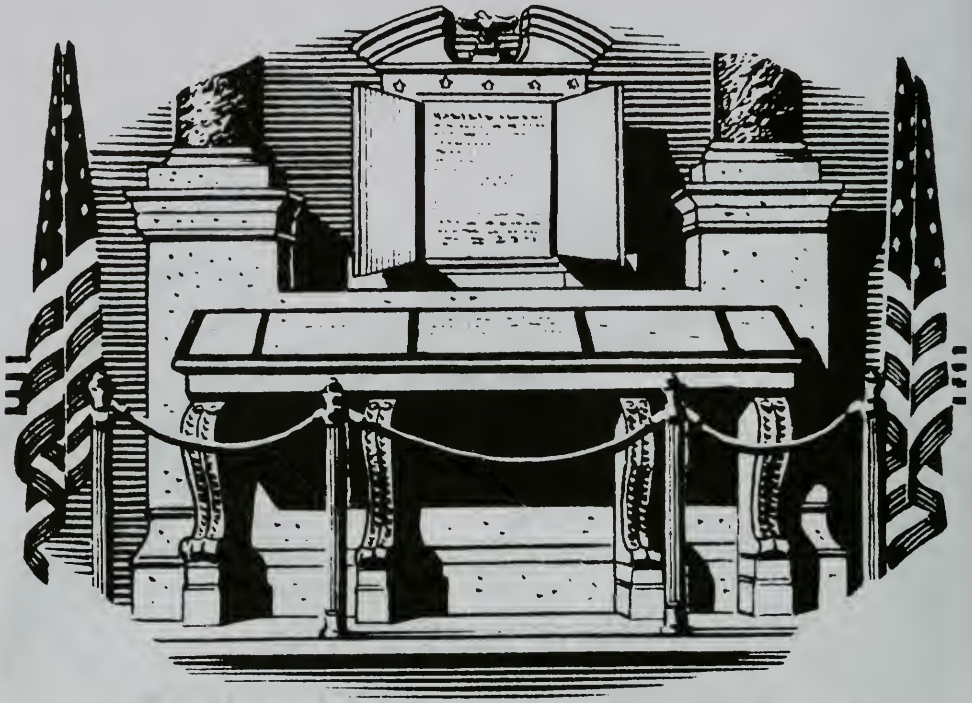
A Letter from Richmond adviſes, that a Motion for previous Amendments was rejected by a Majority of Eight; but that ſome days would be paſſed in conſidering ſubſequent Amendments, and theſe, it appeared, from the temper



the freedom of speech, or of
ress, or the right

PART SIX

AMENDMENTS TO THE CONSTITUTION



The Constitution and the Bill of Rights are on public display in the National Archives in Washington, D.C.

CHAPTER

THE BILL OF RIGHTS AND THE FIRST AMENDMENT

Without the promise of a Bill of Rights, several of the large states would have remained outside of the Union. It was only when George Washington and others invited the states to accept the Constitution and make suggestions for additional improvements, including a Bill of Rights, that several of the states withdrew their opposition and ratified the Constitution.

As we have already pointed out, a total of 189 suggested amendments were submitted to Congress. James Madison boiled these down to 17, but the Congress approved only 12 of them. When these were sent to the states they ratified 10 of them, effective December 15, 1791.

Why the Founders Had Not Considered a Bill of Rights Necessary

Alexander Hamilton and others gave three reasons why a Bill of Rights was not necessary. (See *Federalist Papers*,, No. 84.)

1. The Constitution is a declaration of rights from beginning to end. Nearly 300 rights are pinpointed in the document itself, as this study has demonstrated.
2. Under our limited form of government, with only twenty specific enumerated powers granted to the federal government, there is absolutely no authority included to regulate or invade a citizen's freedom of religion, freedom of press, freedom to assemble, or freedom to petition. Neither is there any federal authority granted to register or confiscate firearms, invade the privacy of citizens, quarter troops in the homes of the people, deprive a citizen of his common-law rights when charged with a crime, impose cruel or unusual punishment, or deprive citizens of any powers not specifically delegated to the government.
3. In addition, as Hamilton pointed out, there was danger in making a list of individual rights because under the law any rights accidentally left off the list might be presumed to be forfeited.

In spite of all this, however, the people insisted on a Bill of Rights. They feared, from bitter experience in the past, that the courts or government executives might somehow twist the meanings of certain words in the Constitution so as to deprive them of their rights, precisely as King George and his officers had done. This is why George Mason, a leading patriot from Virginia, declared that he would rather have his right hand chopped off than sign a Constitution without a Bill of Rights.

Two Unique Features of the Bill of Rights

Today it is somewhat difficult to clearly perceive the Bill of Rights as the Founders gave them to us, because of several debilitating decisions of the Supreme Court in recent years. Nevertheless, the original intent of the Founders needs to be emphasized so that the Bill of Rights might be understood in terms of their original design.

The first feature of the Bill of Rights is the rather amazing fact that it is not a declaration of rights at all. It is a declaration of prohibitions against the federal government. In the minds of the Founders, usurpation and intervention by the federal government in the affairs of the states and the people were the most ominous threats to the happiness and welfare of the American society. Therefore, the Bill of Rights opens with a bold prohibition against federal intervention in specific areas by stating, "Congress shall make NO law ... "

The second unique feature is the repeated declaration that the Founders did not want to have the federal government serve as the watchdog over the states' responsibility to protect the rights of the people. If a state failed to function in protecting the rights of some of its citizens, the Founders wanted the pressure to build up, thus forcing correction within the confines of the state without any interference from the federal government whatsoever.

James Madison learned this lesson the hard way when he tried to include a provision in the Bill of Rights which said: "*No state shall violate the equal rights of conscience, or*

the freedom of the press, or the trial by jury in criminal cases."[1] Obviously, this was designed to authorize the federal government to intervene if a state failed to perform its duty. The Congress turned it down flat. They wanted the federal government to stay out of the business of the states. If the people found their state derelict they were to correct it on the state level and not come running to Washington or the federal courts to have it corrected. Whether they were right or wrong may be debated, but that was their position.

Purpose of the Bill of Rights

The real purpose of the Bill of Rights was set forth in a preamble which is seldom included in texts of the Constitution anymore. Here is why the Founders said they were including the Bill of Rights as a group of amendments to the Constitution:

"The Conventions of a number of states, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses be added; and as extending the ground of public confidence in the government, will best insure the beneficent ends of its institution, [be it] resolved.... "[2]

Then follows the text of the Bill of Rights. It is noteworthy that the Founders were trying to help the courts avoid any "misconstruction" and also add certain "restrictive clauses" to prevent government arrogance and abuse.

PROVISION

215

From the First Amendment

Congress shall make NO law respecting an establishment of religion, or prohibiting the free exercise thereof.

This provision guaranteed to all Americans the RIGHT to enjoy the free exercise of the religion of their choice without the government giving any preference to one "establishment" or denomination over another.

There was some concern among the Founders lest this prohibition give the impression that the government was hostile to religion. They wanted it clearly understood that the universal, self-evident truths of religion were fundamental to the whole structure of the American system. This is such an important aspect of the nation's original culture that a comprehensive discussion of religion from the Founders' perspective might prove helpful.

The Role of Religion in the Founding Fathers' Constitutional Formula

Americans of the twentieth century often fail to realize the supreme importance which the Founding Fathers originally attached to the role of religion in the unique experiment which they hoped would emerge as the first civilization of a free people in modern times. Many

Americans also fail to realize that the Founders felt the role of religion would be as important in our own day as it was in theirs.

In 1787, the very year the Constitution was written by the Convention and approved by Congress, that same body of Congress passed the famous Northwest Ordinance. In it they outlawed slavery in the Northwest Territory. They also enunciated the basic rights of citizens in language similar to that which was later incorporated in the Bill of Rights. And they emphasized the essential need to teach religion and morality in the schools. Here is the way they said it:

"Article 3: Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."[3]

Notice that formal education was to include among its teaching responsibilities these three important subjects:

1. *Religion,* which might be defined as "a fundamental system of beliefs concerning man's origin and relationship to the Creator, the cosmic universe, and his relationship with his fellowmen."
2. *Morality,* which may be described as "a standard of behavior distinguishing right from wrong."
3. *Knowledge,* which is "an intellectual awareness and understanding of established facts relating to any field of human experience or inquiry, i.e., history, geography, science, etc."[4]

We also notice that "religion and morality" were not required by the Founders as merely an intellectual exercise, but they positively declared their conviction that these were essential ingredients needed for "good government and the happiness of mankind."

Washington Describes the Founders' Position

The position set forth in the Northwest Ordinance was reemphasized by President George Washington in his Farewell Address. He wrote:

"Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports....

"And let us with caution indulge the supposition that morality can be maintained without religion.... Reason and experience both forbid us to expect that national morality can prevail to the exclusion of religious principle.

"It is substantially true that virtue or morality is a necessary spring of popular government."[5]

The Teaching of Religion in Schools Restricted to Universal Fundamentals

Having established that "religion" is the foundation of morality and that both are essential to "good government and the happiness of mankind," the Founders then set about to exclude the creeds and biases or dissensions of individual denominations so as to make the teaching of religion a unifying cultural adhesive rather than a devisive apparatus. Jefferson wrote a bill for the "Establishing of Elementary Schools" in Virginia and made this point clear by stating:

"No religious reading, instruction or exercise shall be prescribed or practiced inconsistent with the tenets of any religious sect or denomination."[6]

Obviously, under such restrictions the only religious tenets to be taught in public schools would have to be those which were universally accepted by all faiths and completely fundamental to their premises.

Franklin Describes the Five Fundamentals of "All Sound Religions"

Several of the Founders have left us with a description of their basic religious beliefs, and Benjamin Franklin summarized those which he felt were the "fundamental points in all sound religion." This is the way he said it in a letter to Ezra Stiles, president of Yale University:

"Here is my creed. I believe in one God, the Creator of the universe. That he governs it by his Providence. That he ought to be worshipped. That the most acceptable service we render to him is in doing good to his other children. That the soul of man is immortal, and will be treated with justice in another life respecting its conduct in this. These I take to be the fundamental points in all sound religion."[7]

The "Fundamental Points" to Be Taught in the Schools

The five points of fundamental religious belief which are to be found in all of the principal religions of the world are those expressed or implied in Franklin's statement:

1. Recognition and worship of a Creator who made all things.
2. That the Creator has revealed a moral code of behavior for happy living which distinguishes right from wrong.
3. That the Creator holds mankind responsible for the way they treat each other.
4. That all mankind live beyond this life.
5. That in the next life individuals are judged for their conduct in this one.

All five of these tenets run through practically all of the Founders' writings. These are the beliefs which the Founders sometimes referred to as the "religion of America," and they felt these fundamentals were so important in providing "good government and the happiness of mankind" that they wanted them taught in the public schools along with morality and knowledge.

Statements of the Founders Concerning These Principles

Samuel Adams said these basic beliefs which constitute "the religion of America [are] the religion of all mankind."[8] In other words, these fundamental beliefs belong to all world faiths and could therefore be taught without being offensive to any "sect or denomination,"as indicated in the Virginia bill establishing elementary schools.

John Adams called these tenets the "general principles" on which the American civilization had been founded.[9]

Thomas Jefferson called these basic beliefs the principles "in which God has united us all."[10]

From these statements it is obvious how significantly the Founders looked upon the fundamental precepts of religion and morality as the cornerstones of a free government. This gives additional importance to the warning of Washington, previously mentioned, when he said: "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports.... Who that is a sincere friend to it can look with indifference upon attempts to shake the foundation of the fabric?"[11]

Washington issued this solemn warning because in France, shortly before Washington wrote his Farewell Address (1796), the promoters of atheism and amorality had seized control and turned the French Revolution into a shocking bloodbath of wild excesses and violence. Washington never wanted anything like

that to happen in the United States. Therefore he had said: "In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness [religion and morality]."[12]

Alexis de Tocqueville Discovers the Importance of Religion in America

When Alexis de Tocqueville visited the United States in 1831 he became so impressed with what he saw that he went home and wrote *Democracy in America*, one of the most definitive studies on the American culture and constitutional system that had been published up to that time. Concerning religion in America, de Tocqueville said:

"On my arrival in the United States the religious aspect of the country was the first thing that struck my attention; and the longer I stayed there, the more I perceived the great political consequences resulting from this new state of things."[13]

He described the situation as follows:

"Religion in America takes no direct part in the government of society, but it must be regarded as the first of their political institutions; ... I do not know whether all Americans have a sincere faith in their religion—for who can search the human heart?—but I am certain that they hold it to be indispensable to the maintenance of republican institutions. This opinion is not peculiar to a class of citizens or to a party, but it belongs to the whole nation and to every rank of society."[14]

European Philosophers Turned Out to Be Wrong

In Europe it had been popular to teach that religion and liberty were inimical to each other. De Tocqueville saw the opposite happening in America. He wrote:

"The philosophers of the eighteenth century explained in a very simple manner the gradual decay of religious faith. Religious zeal, said they, must necessarily fail the more generally liberty is established and knowledge diffused. Unfortunately the facts by no means accord with their theory. There are certain populations in Europe whose unbelief is only equaled by their ignorance and debasement; while in America, one of the freest and most enlightened nations in the world, the people fulfill with fervor all the outward duties of religion."[15]

De Tocqueville Describes the Role of Religion in the Schools

De Tocqueville found that the schools, especially in New England, incorporated the basic tenets of religion right along with history and political science in order to prepare the student for adult life. He wrote:

"In New England every citizen receives the elementary notions of human knowledge; he is taught, moreover, the doctrines and the evidences of his religion, the history of his country, and the leading features of the Constitution. In the states of Connecticut and Massachusetts, it is extremely rare to find a man imperfectly acquainted with all these things, and a person wholly ignorant of them is a sort of phenomenon."[16]

De Tocqueville Describes the Role of the American Clergy

Alexis de Tocqueville saw a unique quality of cohesive strength emanating from the clergy of the various churches in America. After noting that all the clergy seemed anxious to maintain "separation of church and state," he nevertheless ob-

served that collectively they had a great influence on the morals and customs of public life. This indirectly reflected itself in formulating laws and, ultimately, in fixing the moral and political climate of the American commonwealth. As a result, he wrote:

"This led me to examine more attentively than I had hitherto done the station which the American clergy occupy in political society. I learned with surprise that they filled no public appointments; I did not see one of them in the administration, and they are not even represented in the legislative assemblies."[17]

How different this was from Europe, where the clergy belonged to a national church, subsidized by the government. He wrote:

"The unbelievers of Europe attack the Christians as their *political* opponents rather than as their religious adversaries; they hate the Christian religion as the opinion of a [political] party much more than as an error of belief; and they reject the clergy less because they are the representatives of the Deity than because they are the allies of government."[18]

In America, he noted, the clergy remain politically separated from the government but nevertheless provide a moral stability among the people which permits the government to prosper. In other words, there is a separation of church and state but *not a separation of religion and state.*

The Clergy Fuel the Flame of Freedom, Stress Morality, and Alert the Citizenry to Dangerous Trends

The role of the churches to perpetuate the social and political culture of the United States provoked the following comment from de Tocqueville:

"I have known of societies formed by Americans to send out ministers of the Gospel into the new Western states, to found schools and churches there, lest religion should be allowed to die away in those remote settlements, and the rising states be less fitted to enjoy free institutions than the people from whom they came."[19]

De Tocqueville discovered that while clergymen felt it would be demeaning to their profession to become involved in partisan politics, they nevertheless believed implicitly in their duty to keep religious principles and moral values flowing out to the people as the best safeguard for America's freedom and political security.

In one of de Tocqueville's most frequently quoted passages, he wrote:

"I sought for the greatness and genius of America in her commodious harbors and her ample rivers, and it was not there; in her fertile fields and boundless prairies, and it was not there; in her rich mines and her vast world commerce, and it was not there. Not until I went to the churches of America and heard her pulpits aflame with righteousness did I understand the secret of her genius and power. America is great because she is good and if America ever ceases to be good, America will cease to be great."[20]

The Founders' Campaign for Equality of All Religions

One of the most remarkable efforts of the American Founders was their attempt to do something no other nation had ever successfully achieved—provide legal equality for all religions, both Chris-

tian and non-Christian.

Jefferson and Madison were undoubtedly the foremost among the Founders in pushing through the first "freedom of religion" statutes in Virginia. Jefferson sought to disestablish the official church of Virginia in 1776, but this effort was not completely successful until ten years later.

Meanwhile, in 1784, Patrick Henry was so enthusiastic about strengthening the whole spectrum of Christian churches that he introduced a bill "Establishing a Provision for Teachers of the Christian Religion."

It was the intention of this bill to allow each taxpayer to designate "to what society of Christians" his money would go. The funds collected by this means were to make "provision for a minister or teacher of the Gospel . . . or the providing of places of divine worship [for that denomination], and to none other use whatever."[21]

Madison immediately reacted with his famous *Memorial and Remonstrances,* in which he proclaimed with the greatest possible energy the principle that the state government should not prefer one religion over another. Equality of religions was the desired goal. He wrote:

"Who does not see that the same authority which can establish Christianity, in exclusion of all other religions, may establish with the same ease any particular sect of Christians, in exclusion of all other sects? . . . The bill violates that equality which ought to be the basis of every law."[22]

Why the Founders Wanted the Federal Government Excluded from All Problems Relating to Religion and Churches

The Supreme Court has stated on numerous occasions that, to most people, freedom of religion is the most precious of all the inalienable rights, next to life itself. When the United States was founded, there were many Americans who were not enjoying freedom of religion to the fullest possible extent. At least seven of the states had officially established religions or denominations at the time the Constitution was adopted. These included:

Connecticut (Congregational Church)
New Hampshire (Protestant faith)
Delaware (Christian faith)
New Jersey (Protestant faith)
Maryland (Christian faith)
South Carolina (Protestant faith)
Massachusetts (Congregational Church)[23]

Under these circumstances the Founders felt it would have been catastrophic, and might have precipitated civil strife, if the federal government had tried to establish a national policy on religion or disestablish the denominations which the states had adopted. Nevertheless, the Founders who were examining this problem were anxious to eventually see complete freedom of all faiths and an equality of all religions, both Christian and non-Christian. How could this be accomplished without stirring up civil strife?

Justice Story Describes the Founders' Solution

In his famous *Commentaries on the Constitution,* Justice Joseph Story of the Supreme Court pointed out why the Founders, as well as the states themselves, felt the federal government should be absolutely excluded from any authority in the field of settling questions on religion. He explained:

"In some of the states, Episcopalians constituted the predominant sect; in others, Presbyterians; in others, Congrega-

tionalists; in others, Quakers; and in others again, there was a close numerical rivalry among contending sects. It was impossible that there should not arise perpetual strife and perpetual jealousy on the subject of ecclesiastical ascendancy, if the national government were left free to create a religious establishment. The only security was in extirpating the power. But this alone would have been an imperfect security, if it had not been followed by a declaration of the right of the free exercise of religion, and a prohibition (as we have seen) of all religious tests. *Thus the whole power over the subject of religion is left exclusive to the state governments, to be acted upon according to their own sense of justice, and the state constitutions.*"[24]

This is why the First Amendment of the Constitution provides that "Congress shall make NO law respecting an establishment of religion or prohibiting the free exercise thereof." (Emphasis added.)

Jefferson and Madison Emphasize the Intent of the Founders

It is clear from the writings of the Founders as well as the *Commentaries* of Justice Story that the First Amendment was designed to eliminate forever the interference of the federal government in any religious matters within the various states. As Madison stated during the Virginia ratifying convention: "There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation."[25]

Jefferson took an identical position when he wrote the Kentucky Resolutions of 1798: "It is true, as a general principle, ...that no power over the freedom of religion, freedom of speech, or freedom of the press, [is] delegated to the United States by the Constitution.... All lawful powers respecting the same did of right remain, and were reserved to the states, or to the people."[26]

The Supreme Court, As Well As Congress, Excluded from Jurisdiction over Religion

In the Kentucky Resolutions, Thomas Jefferson also made it clear that the federal judicial system was likewise prohibited from intermeddling with religious matters within the states. He wrote:

"Special provision has been made by one of the amendments to the Constitution, which expressly declares that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, ... ' thereby guarding in the same sentence, and under the same words, the freedom of religion, of speech, and of the press, insomuch that whatever violates either throws down the sanctuary which covers the others; and that libels, falsehood, and defamation, equally with heresy and false religion, ARE WITHHELD FROM THE COGNIZANCE OF FEDERAL TRIBUNALS."[27]

The "Wall" Between Church and the Federal State

When Thomas Jefferson was serving in the Virginia legislature, he introduced a bill to have a day of fasting and prayer; but when he became President, Jefferson said there was no authority in the federal government to proclaim religious holidays. In a letter to the Danbury Baptist Association dated January 1, 1802, he explained his position and said the Constitution had created "a wall of separation between Church and State."[28]

In recent years the Supreme Court has used this metaphor as an excuse for med-

dling in the religious issues arising within the various states. As we shall see later, it has not only presumed to take jurisidiction in these disputes, but has actually forced the states to take the same hands-off position toward religious matters, even though this restriction originally applied only to the federal government. This obvious distortion of the original intent of Jefferson (when he used the metaphor of a "wall" separating church and state) becomes entirely apparent when the statements and actions of Jefferson are examined in their historical context.

It will be recalled that Jefferson and Madison were anxious that the states intervene in religious matters until there was equality among all religions and that all churches or religions assigned preferential treatment should be disestablished from such preferment. They further joined with the other Founders in expressing an anxiety that ALL religions be encouraged in order to promote the moral fiber and religious tone of the people. This, of course, would be impossible if there were an impenetrable "wall" between church and state on the state level. Jefferson's "wall" was obviously intended only for the federal government, and the Supreme Court application of this metaphor to the states has come under severe criticism.[29]

Religious Problems Must Be Solved Within the Various States

In Thomas Jefferson's second inaugural address, he virtually signalled the states to press forward in settling their religious issues, since it was within their jurisdiction and not that of the federal government:

"In matters of religion, I have considered that its free exercise is placed by the Constitution independent of the powers of the general government. I have therefore undertaken, on no occasion, to prescribe the religious exercises suited to it; but have left them as the Constitution found them, under the direction and discipline of State or Church authorities acknowledged by the several religious societies."[30]

Jefferson, along with the other Founders, believed that it was within the power of the various states to eliminate those inequities which existed between the various faiths and then pursue a policy of encouraging religious institutions of all kinds, because it was in the public interest to use their influence to provide the moral stability needed for "good government and the happiness of mankind."[31]

Jefferson's resolution for disestablishing the Church of England in Virginia was not to set up a wall between the state and the church, but simply, as he explained it, for the purpose of "taking away the privilege and preeminence of one religious sect over another, and thereby [establishing] ...EQUAL...RIGHTS AMONG ALL."[32]

Affirmative Programs to Encourage All Religions on the State Level

In view of the extremely inflexible and rigid position which the U.S. Supreme Court has taken in recent years concerning the raising up of a "wall" between state government and religion, it is remarkable how radically different the Founders' feelings about such matters were.

Take, for example, the Founders' approval of religious meetings in tax-supported public buildings. The Founders had no objection to using public buildings for religious purposes; that was even to be encouraged. The only question was

whether or not the facilities could be made available EQUALLY to all denominations desiring them. Notice how Jefferson reflected his deep satisfaction in the way the churches were using the local courthouse in Charlottesville, near Jefferson's home:

"In our village of Charlottesville, there is a good degree of religion, with a small spice only of fanaticism. We have four sects, but without either church or meeting-house. The court-house is the common temple, one Sunday in the month to each. Here, Episcopalian and Presbyterian, Methodist and Baptist, meet together, join in hymning their Maker, listen with attention and devotion to each others' preachers, and all mix in society with perfect harmony."[33]

One cannot help asking the modern Supreme Court: Where is the wall of separation between church and state when the courthouse is approved for the common temple of all the religious sects of a village?

Of course, Jefferson would be the first to require some other arrangement if all of the churches could not be accommodated equally, but so long as they were operating equally and harmoniously together, it was looked upon as a commendable situation. The fact that they were utilizing a tax-supported public building was not even made an issue.

Jefferson Proposes Accommodations for Religious Instructions at a State School

Not only did the Congress of the Founders' day provide in the Northwest Ordinance that the basic tenets of religion and the fundamentals of morality should be taught in the public schools, but Jefferson proposed that the University of Virginia extend its facilities to the various denominations so that each student could worship and study in the church of his choice. Jefferson wrote:

"Can the liberties of a nation be thought secure when we have removed [by eliminating religious instruction] their only firm basis—a conviction in the minds of the people that these liberties are...the gift of God? That they are not to be violated but with his wrath?"[34]

To encourage religious studies by college students of different faiths, Jefferson proposed the following:

1. The responsibility for teaching "the proofs of the being of a God, the creator, preserver, and supreme ruler of the universe, the author of all the relations of morality, and of the laws and obligations these infer, will be within the province of the professor of ethics."[35]

2. If the university faculty will also teach "the developments of these moral obligations, of those in which all sects agree, [together with] a knowledge of the languages, Hebrew, Greek, and Latin, a basis will be formed common to all sects."[36]

3. Encourage "the different religious sections to establish, each for itself, a professorship of their own tenets, on the confines [campus] of the university, so near... that their students may attend the lectures there, and have the free use of our library, and every other accommodation we can give them; preserving, however, their independence of us and of each other."[37]

4. Enable "students of the University to attend religious exercises with the professor of their particular sect, either in the rooms of the buildings still to be erected [by each denomination on

campus] or ... in the lecturing room of such professor."[38]

5. Urge students to participate in regular religious exercises but do so without conflicting with the established schedule of the university. Said he: "Should the religious sects of this State, or any of them, according to the invitation held out to them, establish within or adjacent to, the precincts of the University, schools for instruction in the religion of their sect, the students of the University will be free, and *expected to attend* religious worship at the establishment of their respective sects ... in time to meet their school in the University at its stated hour."[39]

Summary of Jefferson's Views

From these various documented sources it is apparent that Thomas Jefferson had a number of clearly defined views which he hoped would become the traditional American life-style with reference to religion and the Constitution. Perhaps these views might be summarized as follows:

1. The First Amendment prohibits the federal government from intermeddling in religious matters in any way. It is not to take any positive action which would tend to create or favor some "establishment of religion," nor is it to interfere or prohibit the free exercise of any religion.
2. The individual state, however, has the responsibility to see that laws and conditions are such that all religious denominations or sects receive equal treatment.
3. There should be a regularly established policy of teaching the fundamentals of religion and morality in the public schools.
4. In addition, there should be an opportunity, on the university level at least, for each denomination to be invited to build facilities on or adjacent to the campus where the students of that particular denomination could be expected to attend regular worship services and receive instructions in their particular faith.
5. Professors might also hold special services or classes of religious instruction in the rooms assigned to them at the university in order to accommodate the needs of the students belonging to their particular faith.
6. Students studying for the ministry at nearby seminaries should be allowed to have full access to the resources of the university library.
7. However, in spite of all of these efforts to encourage religion indirectly, there must be no use of tax funds to subsidize any religion *directly*.

Jefferson Sees Great Advantages in Following These Guidelines

By leaving it exclusively to the states to work out the equal encouragement of all religions, at the same time giving them no direct subsidy, Jefferson felt the goals of the Founders would be achieved. He felt there was a need to fill "the chasm" of religious ignorance which constituted a liability to society and at the same time leave "inviolate the constitutional freedom of religion, the most unalienable and sacred of all human rights."[40]

Jefferson, like other leaders among the Founders, seemed anxious to not only encourage all religious faiths on a basis of equality, but also to have them develop a spirit of toleration for each other. In referring to the university campus and its immediate environs, where all faiths

would be invited to provide facilities, Jefferson wrote:

"By bringing the sects together, and mixing them with the mass of other students, we shall soften their asperities, liberalize and neutralize their prejudices and make the general religion a religion of peace, reason and morality."[41]

How the Courts Began Building a Wall Between Religion and the State

It is a well-known principle of substantive law that the Constitution and the law should be interpreted very strictly according to the original intent of those who created it. As Chief Justice Roger B. Taney stated in *Dred Scott* v. *Sanford*, "It [the Constitution] speaks not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of the framers."[42]

In the case of *Barron* v. *Baltimore*,[43] Chief Justice Marshall affirmed that the Bill of Rights in the Constitution was a series of prohibitions against the federal government to prevent it from encroaching on the states.

Applying this to worship, the court's decision meant that there was a "wall" between the federal government and any "establishment of religion," just as Jefferson had said.

However, in the case of *Gitlow* v. *New York*,[44] the Supreme Court used certain provisions in the federal Bill of Rights and applied them to the states. The court justified this action on the basis of the Fourteenth Amendment, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The opponents of traditional theistic religion and morality saw the Gitlow case as an opportunity to invoke the power of the federal courts to build a wall between each of the states and any form of religious encouragement, even though it was provided *indirectly*. In other words, they would reverse the Founders' original policy.

The case of *Cantwell* v. *Connecticut*[45] was the first ruling of the Supreme Court in which the "Gitlow doctrine" was applied to religious liberty, and *Everson* v. *Board of Education*[46] was the first time the Supreme Court applied the "due process" clause of the Fourteenth Amendment to make the federal wall of separation apply to religious matters among the individual states.

What this amounted to was the actual breaking down of the federal wall set up by the First Amendment so that the Supreme Court actually usurped jurisdiction over religious matters in the states and began dictating what the states could or could not do with reference to religious questions. Without a doubt, there has been a severe wrenching of the Constitution from its original First Amendment moorings ever since this new trend began.

The Supreme Court Prohibits Teaching Religion in Schools

It is interesting that in the debates over ratification Madison stated the position of the Founders when he said: "There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation."[47] Nevertheless, in *McCollum* v. *Board of Education*[48] the Supreme Court intervened in a religious

question. It used the Gitlow doctrine to tell a state board of education that it would not allow children, even with their parents' consent, to take religion classes in school. The students had been authorized by the board of education to sign up for these classes, which were being taught by the representatives of their own particular faith. They then attended these classes as part of their regular studies, just as Jefferson had recommended for the University of Virginia. The court ignored the fact that there was equality of opportunity for any of the denominations to provide such classes and used the "wall" doctrine to outlaw use of tax-supported facilities for the teaching of religion by any denomination. There was a strong dissent by Justice Stanley F. Reed.

The Supreme Court Approves "Released Time" for Religious Education

It is of further interest that the Supreme Court took its newly acquired jurisdiction over religious questions in state schools to announce in *Zorach* v. *Clauson* that it was very solicitous of religion and would approve classes in religion during the regular school day, *providing* the classes were held separate from any tax-supported property. Justice William O. Douglas wrote the opinion from the following frame of reference:

"We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for a wide variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma."[49]

Justice Douglas went even further to state, "We find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence."[50]

The Cultural Vacuum Created by the Court: So-Called "Neutrality"

However, in the case of *Everson* v. *Board of Education*[51] the Supreme Court made it clear that neither the federal government nor a state government could encourage religion in any way. Justice Hugo L. Black spoke for the court and declared in his opinion, "Neither a State nor the Federal government ... can pass laws which aid one religion, *aid all religions,* or prefer one religion over another."[52]

The Founders would have heartily endorsed Justice Black's "no preference" doctrine, but they would, no doubt, have objected vigorously to outlawing indirect aid for, and encouragement to, "all religions." In the final analysis, it was "all religions" the Founders had said they were relying upon to undergird society with those moral teachings which are "necessary to good government and the happiness of mankind."[53]

No doubt they would have further objected to the court's presumptive usurpation in taking jurisdiction over a religious question which had been specifically reserved, by the First and Tenth Amendments, to the states themselves.

The Founders seemed fully aware that failure to encourage "all religions" in their important role of teaching fundamental morality would leave a void or cultural vacuum in their formula for a great new civilization of freedom and prosperity. It seems that all empirical evidence of histo-

ry and human experience sustains their position. Then why did the court take the position it did?

All of the cases from then until now suggest that the court considered its position of "neutrality" more fair and more correct in administering true justice. What some legal scholars are beginning to point out, however, is that the position of so-called neutrality has not achieved what the court said it intended. It has indeed given "secularism," or the emphasis of nonspiritual and nonmoral principles, the clear advantage of a virtual monopoly in the arena of public education and the administration of public institutions.[54]

The Supreme Court Outlaws Prescribed Prayers in Schools

In the case of *Engel* v. *Vitale*,[55] the issue was that the New York regents had prepared a nondenominational prayer for use in the public schools. The New York Court of Appeals upheld the prayer, but the Supreme Court once more intermeddled in a religious question of a state by ruling that a nondenominational prayer prescribed by the officials of the state was "establishing" a religion.

However, contrary to popular belief, the court did not say that prayers were unlawful, providing they were voluntary and *not* prescribed or set by the state. Nevertheless, this case gave the advocates of secularism an excuse to push through rulings in many states that prayer would not be allowed in the schools.

The Supreme Court Outlaws the Lord's Prayer and Bible Reading in the Public Schools

In *Abington School District* v. *Schempp*,[56] the Supreme Court ruled that opening exercises at the high school involving the recitation of the Lord's Prayer, as well as reading Bible verses, were unconstitutional. The court rejected the proposition that the opening exercises had a secular purpose, namely, the "promotion of moral values, the contradiction to the materialistic trends of our times, the perpetuation of our institutions and the teachings of literature."

It was pointed out to the court that "unless these religious exercises are permitted, a 'religion of secularism' is established in the schools," but the Court rejected this argument.[57]

At this point it appears that for all intents and purposes the design of the Founding Fathers to have the public schools teach the fundamental principles of religion and morality is dead.

Need for an Amendment

The intent of the Founding Fathers (and the desires of the vast majority of American parents) to have these ideals taught in the schools will probably never be restored without a constitutional amendment, which must further define the right of the states to have exclusive jurisdiction over the determination of religious questions. At the same time it would undoubtedly be the desire of the overwhelming majority of Americans that the states be required to give equal encouragement to all religions on a nonpreference basis.

Daniel Webster Describes the Founders' Traditional Goal

In our own day of accelerating rates of crimes of violence, narcotics addiction, billion-dollar pornography sales, hedonistic sexual aberrations, high divorce rates, and deteriorating family life, the American people might well recall the stirring words of Daniel Webster, which he spoke to the New York Historical Society, February 22, 1852:

"Unborn ages and visions of glory crowd upon my soul, the realization of all which, however, is in the hands and good pleasure of Almighty God; but, under his divine blessing, it will be dependent on the character and virtues of ourselves and of our posterity.... If we and they shall live always in the fear of God, and shall respect his commandments ... we may have the highest hopes of the future fortunes of our country.... It will have no decline and fall. It will go on prospering.... But if we and our posterity reject religious instruction and authority, violate the rules of eternal justice, trifle with the injunctions of morality, and recklessly destroy the political constitution which holds us together, no man can tell how sudden a catastrophe may overwhelm us, that shall bury all our glory in profound obscurity. Should that catastrophe happen, let it have no history! Let the horrible narrative never be written!"

PROVISION

216

From the First Amendment

The Congress shall make NO law abridging the freedom of speech, or of the press.

This provision gave the American people the RIGHT to have the federal government prohibited from exercising any legal authority over the freedom of speech or the freedom of the press.

This provision does not in any way imply that the freedom of speech and the freedom of press are *absolute* rights. Both must necessarily operate under reasonable restrictions. However, the Founders wanted these regulations and standards of propriety to be established by the states, not the federal government.

On the state level it is necessary to prohibit freedom of speech in a number of ways. For example, it is not permissible to use freedom of speech to slander or libel another person. It is also unlawful to cry "Fire!" in a crowded auditorium or theater as a practical joke and thereby cause a panic. There are also restrictions on where free speech may be exercised if it will attract a crowd and impede the use of a public thoroughfare or park without prior permission.

Freedom of the press has been a difficult right to protect and preserve.

Almost from the moment that the art of printing began to be a significant cultural influence, efforts were exerted to gain control of its use by the king or the central government. For example, Henry VIII (1509-1547) took absolute control of the press, both as to who could print and what could be printed. When Cromwell ruled during the period of the Lone Parliament, the same control continued. By 1758, however, freedom of the press had been established to the point where Blackstone could say, "Every freeman has

an undoubted right to lay what sentiments he pleases before the public.... But if he publishes what is improper, mischievous, or illegal, he must take the consequence of his temerity."[58]

PROVISION

217

From the First Amendment

Congress shall make NO law abridging the right of the people to peaceably assemble.

This provision guarantees the RIGHT of the people to peaceably assemble without any interference by the federal government.

One of the foremost complaints of the American colonies against King George III was that "assemblies have been frequently dissolved, contrary to the rights of the people, when they attempted to deliberate on grievances." It further complained that their "petitions to the Crown for redress have been repeatedly treated with contempt by his Majesty's Minister of State."

This provision has not been easy to preserve even in the United States. During the debate of highly inflammatory issues, the tendency of government officials is to look with grave suspicion upon various assemblies and sometimes ignore petitions which run contrary to current administrative policy. President Van Buren's administration was marked by a struggle to prevent the receipt and consideration by Congress of numerous petitions for the abolition of slavery. Senator John C. Calhoun even declared such petitions to be "a violation of the Constitution!"[59]

Difficult cases have arisen in connection with the enforcement of sedition laws. For example, it is a violation of the law to assemble for the purpose of conspiring to commit a crime or to use violence in overthrowing constituted authority. However, a peaceable assembly for lawful discussion cannot be made a crime.

PROVISION

218

From the First Amendment

The Congress shall make NO law abridging the right of the people to petition the government for a redress of grievances.

This provision guarantees the people the RIGHT to be able to petition the government without intervention or prohibition by the authorities.

In the Declaration of Independence, Thomas Jefferson denounced in the strongest possible terms the refusal of the king to give respectful consideration

to the petitions of the people. He wrote:

"In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people."

Of course, governments throughout the ages have resented petitions for the simple reason that they usually itemize the sins of government and the dereliction of administration by government offices. Nevertheless, this is the safety valve by which governments survive. Unless administrators are sensitive to the grievances of the people, the hostility of rebellious forces can reach a boiling temperature. King George III learned this too late. So did Louis XVI of France. Constant communications between the government and its people is fundamental to an efficient administration.

There are five ways to petition the government for a "redress of grievances":

1. By submitting a formal petition signed by numerous supporters. (This is probably the least effective of all the methods of petition.)
2. A personal letter or telegram. (This is more effective than many citizens realize.)
3. A personal contact. (This is even more effective, especially if it is done by several people at the same time.)
4. A paid lobbyist. (This is making direct contact but through an intermediary who has a personal acquaintance with the government official. It is often very effective.)
5. Public demonstration. (This is very effective, providing there is no violence. Violence has a backlash effect which creates hostile resistance.)

One of the most effective means of petitioning the government is through public demonstration.

1. Adler et al., *The Annals of America,* 3:358.

2. Charles Callan Tansill, ed., *The Making of the American Republic: The Great Documents, 1774–1789,* (New Rochelle, N.Y.: Arlington House, n.d.), p. 1063.

3. Adler et al., *The Annals of America,* 3:194–95.

4. W. Cleon Skousen, *The Five Thousand Year Leap: Twenty-eight Ideas That Changed the World* (Salt Lake City: Freemen Institute, 1981), p. 76.

5. Adler et al., *The Annals of America,* 3:612.

6. John William Randolph, ed., *Early History of the University of Virginia, as Contained in the Letters of Thomas Jefferson and Joseph C. Cabell* (Richmond: 1856), pp. 96–97.

7. Smyth, *The Writings of Benjamin Franklin,* 10:84.

8. Wells, *The Life and Public Services of Samuel Adams,* 3:23.

9. See Bergh, 13:290–94.

10. Ibid., 14:198.

11. Adler et al., *The Annals of America,* 3:612.

12. Ibid.

13. Tocqueville, *Democracy in America,* 1:319.

14. Ibid., p. 316.

15. Ibid., p. 319.

16. Ibid., p. 327.

17. Ibid., p. 320.

18. Ibid., p. 325; emphasis added.

19. Ibid., p. 317.

20. Quoted in Ezra Taft Benson, *God, Family, Country: Our Three Great Loyalties* (Salt Lake City: Deseret Book Company, 1975), p. 360.

21. Quoted in *Everson* v. *Board of Education,* 330 U.S. 1, 72, 94.

22. William C. Rives and Philip R. Fendall, eds., *Letters and Other Writings of James Madison,* 4 vols. (Philadelphia: J. B. Lippincott, 1865), 1:163–64.

23. C. B. Kruse, Jr., "The Historical Meaning and Judicial Construction of the Establishment of Religion Clause of the First Amendment," *Washburn Law Journal* 2 (Winter 1962): 65, 94–107.

24. Joseph Story, *Commentaries on the Constitution of the United States,* 3d ed., 2 vols. (Boston: Little, Brown and Company, 1858), 2:666–67; emphasis added.

25. Elliot, 3:330.

26. Adler et al., *The Annals of America,* 4:63.

27. Ibid.; emphasis added.

28. Bergh, 16:282.

29. See Dallin H. Oaks, ed., *The Wall Between Church and State* (Chicago: University of Chicago Press, 1963), pp. 2–3.

30. Bergh, 3:378.

31. Northwest Ordinance of 1787, Article 3, in Adler et al., *The Annals of America,* 3:194–95.

32. Boyd, 1:531; emphasis added.

33. Ford, 4:83.

34. Bergh, 2:227.

35. Randolph, *Early History of the University of Virginia,* p. 441.

36. Ibid.

37. Ibid., p. 475.

38. Ibid.

39. Padover, *The Complete Jefferson,* p. 1110; emphasis added.

40. Randolph, *Early History of the University of Virginia,* p. 475.

41. Ford, 12:272.

42. 19 Howard 395; 60 U.S. 393.

43. 32 U.S. 243.

44. 268 U.S. 652.

45. 310 U.S. 296.

46. 330 U.S. 1.

47. Elliot, 3:330.

48. 333 U.S. 203.

49. 343 U.S. 313.

50. Ibid., p. 314.

51. 330 U.S. 1.

52. 330 U.S. 15; emphasis added.

53. Northwest Ordinance of 1787, in Adler et al., *The Annals of America,* 3:194–95.

54. For a discussion on the problem of neutrality, see Paul James Toscano, "A Dubious Neutrality: The Establishment of Secularism in the Public Schools," *Brigham Young University Law Review,* 1979, no. 2, pp. 177–211.

55. 370 U.S. 421.

56. 374 U.S. 223.

57. Ibid., p. 225.

58. Norton, *Undermining the Constitution: A History of Lawless Government,* p. 199.

59. Ibid., p. 205.

Congress of the United States

begun and held at the City of New-York, on
Wednesday the Fourth of March, one thousand seven hundred and eighty nine

THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution.

RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; viz.

ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

Article the first.... After the first enumeration required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

Article the second No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

Article the third Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article the fourth A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article the fifth No Soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Article the sixth The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article the seventh No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Article the eighth In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article the ninth In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article the tenth Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article the eleventh The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article the twelfth The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ATTEST,

Frederick Augustus Muhlenberg Speaker of the House of Representatives
John Adams, Vice President of the United States, and President of the Senate

John Beckley, Clerk of the House of Representatives
Sam. A. Otis Secretary of the Senate

CHAPTER

AMENDMENTS TWO THROUGH TWELVE

Having covered the First Amendment in the previous chapter, we now consider all of the amendments which became part of the Constitution up to the time of the Civil War. These include those amendments which guaranteed the right of the people to defend themselves, the protection of the home against military occupation, the rights of privacy and security, the protection of a person accused of a crime, the right to have a jury trial in civil suits as well as criminal cases, protection against excessive bail, protection against cruel and unusual punishment, and protection from intrusion by the federal government into the rights reserved to the people and the states.

There was also the Eleventh Amendment, which returned to the states the sovereign right not to be subject to suits by citizens of

other states without their consent, and the Twelfth Amendment, which required the electoral college to vote for the President and the Vice President on separate ballots.

To all Americans who love their rights, this is an important chapter.

PROVISION

219

From the Second Amendment

Because a well-regulated state militia is necessary for the security of a free people, the right of the people to keep and bear arms shall not be infringed by the federal government.

This provision guarantees the RIGHT of the people to keep and bear arms without interference by the federal government. In the early history of the country the state militia was made up of private citizens, who usually furnished their own arms. Thus, during the Revolutionary War the Minutemen could be assembled on very short notice and arrayed into a formidable military force because each man had his own weapons.

Today the state militia is that body of citizens which, under law, can be called up by the governor or Congress to protect the rights and security of the people, or enforce the law.

Who Belongs to the State Militia?

Many Americans do not even realize that they belong to the militia of their state. They confuse their state militia with the National Guard, which is a specialized reserve corps in each state trained at federal expense for immediate service.

Under Title 10, section 31 of the U.S. Code, the militia of each state includes "all able-bodied males at least 17 years of age and under 45 years of age who are or have [made] a declaration of intent to become citizens."

If the Equal Rights Amendment had been adopted, this provision would also include all females between those ages.

An Armed Citizenry

The right to keep and bear arms was considered by the Founders to be an *unalienable* right connected with the preservation of life, liberty, and property.

Today Americans are the best-armed civilian population in the world. The number of private citizens owning arms is estimated to be around fifty million. The number of firearms in the possession of private citizens is estimated to be between 150 and 200 million weapons.

The Threat of Political Disarmament

It is a historical fact that in nations where the political leaders want to curtail the rights of the people and take away their property and freedom, they always begin by trying to disarm them. This is usually done by first requiring them to register their firearms and imposing a heavy penalty on those who do not. It has been determined that in many instances the next step is to deliberately provoke widespread rioting and violence. The government can then use this as an excuse to

confiscate all firearms in the possession of private citizens and do it on the grounds that "we have to somehow stop all this killing."

What About Gun Control to Curb Crime?

There are also those who feel it would cut down crime if there were a federal law prohibiting the people from having certain types of guns.

Senator Orrin G. Hatch (R-Utah), chairman of the Senate subcommittee on the Constitution, said:

"If gun laws in fact worked, the sponsors of this type of legislation should have no difficulty drawing upon long lists of examples of crime rates reduced by such legislation. That they cannot do so after a century and a half of trying — that they must sweep under the rug the southern attempts at gun control in the 1870–1910 period, the northeastern attempts in the 1920–1939 period, and the attempts at both Federal and State levels in 1965–1976 — establishes the repeated, complete, and inevitable failure of gun laws to control serious crime."[1]

Should Firearms Be Restricted to the Militia or National Guard?

In recent years some individuals have tried to interpret the Second Amendment to mean that the right of the state militia or the National Guard to bear arms shall not be infringed, but that this does not guarantee the right of the *people* to bear arms.

This view would have shocked the Founders. The clear intent of the Second Amendment may be found in the commentaries of those who wrote it and approved it as part of the Constitution. Here are some examples:

Lee: "To preserve liberty, it is essential that the whole body of the people always possess arms, and be taught alike, especially when young, how to use them."[2]

S. Adams: "The said Constitution shall never be construed to authorize Congress to ... prevent the people of the United States who are peaceable citizens from keeping their own arms."[3]

Henry: "The great object is that every man be armed.... Everyone who is able may have a gun."[4]

Because there has been so much misunderstanding concerning the Founders' intent when they wrote the Second Amendment, we are including extracts from the carefully documented 1982 report by the Senate Subcommittee on the Constitution, which was cited previously.

History of the Right to Keep and Bear Arms

"The right to keep and bear arms as a part of English and American law antedates not only the Constitution, but also the discovery of firearms. Under the laws of Alfred the Great, whose reign began in A.D. 872, all English citizens from the nobility to the peasants were obliged to privately purchase weapons and be available for military duty. This was in sharp contrast to the feudal system as it evolved in Europe, under which armament and military duties were concentrated in the nobility. The body of [Anglo-Saxon] armed citizens were known as the 'fyrd.'

English History of the Right to Bear Arms

"While a great many of the Saxon rights were abridged following the Norman conquest, the right and duty of arms possession was retained. Under the Assize of Arms of 1181, 'the whole community of freemen' between the ages of 15 and 40 were required by law to possess

certain arms, which were arranged in proportion to their possessions. They were required twice a year to demonstrate to Royal officials that they were appropriately armed. In 1253, another Assize of Arms expanded the duty of armament to include not only freemen, but also villeins, who were the English equivalent of serfs. Now all 'citizens, burgesses, free tenants, villeins and others from 15 to 60 years of age' were obliged to be armed. While on the Continent the villeins were regarded as little more than animals hungering for rebellion, the English legal system not only permitted, but affirmatively required them, to be armed.

"The thirteenth century saw further definitions of this right as the long bow, a formidable armor-piercing weapon, became increasingly the mainstay of British national policy. In 1285, Edward I commanded that all persons comply with the earlier Assizes and added that 'anyone else who can afford them shall keep bows and arrows.'... In 1369, the King ordered that the sheriffs of London require all citizens 'at leisure time on holidays' to 'use in their recreation bowes and arrows' and to stop all other games which might distract them from this practice.

"The Tudor kings experimented with limits upon specialized weapons — mainly crossbows and the then-new firearms. These measures were not intended to disarm the citizenry, but on the contrary to prevent their being diverted from longbow practice by sport with other weapons which were considered less effective. Even these narrow measures were shortlived.... Fathers were required by law to purchase bows and arrows for their sons between the age of 7 and 14 and to train them in longbow use....

"The militia continued to be a pivotal force in the English political system. The British historian Charles Oman considers the existence of the armed citizenry to be a major reason for the moderation of monarchical rule in Great Britain; 'More than once he [Henry VIII] had to restrain himself, when he discovered that the general feeling of his subjects was against him.... His "gentlemen pensioners" and his yeomen of the guard were but a handful, and bills or bows were in every farm and cottage'....

Colonial History of the Right to Bear Arms

"In the colonies, availability of hunting and need for defense led to armament statutes comparable to those of the early Saxon times. In 1623, Virginia forbade its colonists to travel unless they were 'well armed'; in 1631 it required colonists to engage in target practice on Sunday and to 'bring their peeces to church.' In 1658 it required every householder to have a functioning firearm within his house and in 1673 its laws provided that a citizen who claimed he was too poor to purchase a firearm would have one purchased for him by the government, which would then require him to pay a reasonable price when able to do so. In Massachusetts, the first session of the legislature ordered that not only freemen, but also indentured servants own firearms, and in 1644 it imposed a stern 6 shilling fine upon any citizen who was not armed.

"When the British government began to increase its military presence in the colonies in the mid-eighteenth century, Massachusetts responded by calling upon its citizens to arm themselves in defense. One colonial newspaper argued that it was impossible to complain that this act was illegal since they were 'British subjects, to whom the privilege of possessing arms is expressly recognized by the Bill of

Rights' while another argued that this 'is a natural right which the people have reserved to themselves, confirmed by the Bill of Rights, to keep arms for their own defense'. The newspaper cited Blackstone's commentaries on the laws of England, which had listed the 'having and using arms for self preservation and defense' among the 'absolute rights of individuals.' The colonists felt they had an absolute right at common law to own firearms.

"Together with freedom of the press, the right to keep and bear arms became one of the individual rights most prized by the colonists. When British troops seized a militia arsenal in September 1774, and incorrect rumors that colonists had been killed spread through Massachusetts, 60,000 citizens took up arms. A few months later, when Patrick Henry delivered his famed 'Give me liberty or give me death' speech, he spoke in support of a proposition 'that a well regulated militia, composed of gentlemen and freemen, is the natural strength and only security of a free government.... 'Throughout the following revolution, formal and informal units of armed citizens obstructed British communication, cut off foraging parties, and harassed the thinly stretched regular forces. When seven states adopted state 'bills of rights' following the Declaration of Independence, each of those bills of rights provided either for protection of the concept of a militia or for an express right to keep and bear arms.

The Right to Bear Arms After the Revolution

"Following the revolution but previous to the adoption of the Constitution, debates over militia proposals occupied a large part of the political scene. A variety of plans were put forth by figures ranging from George Washington to Baron von Steuben. All of the proposals called for a general duty of all citizens to be armed, although some proposals (most notably von Steuben's) also emphasized a 'select militia.' ... Richard Henry Lee, in his widely read pamphlet "Letters from the Federal Farmer to the Republican," worried that the people might be disarmed 'by modeling the militia.'...He proposed that 'the Constitution ought to secure a genuine, and guard against a select militia,' adding that 'to preserve liberty, it is essential that the whole body of the people always possess arms and be taught alike, especially when young, how to use them.' ...

"Other figures of the period were of like mind. In the Virginia convention, George Mason, drafter of the Virginia Bill of Rights, accused the British of having plotted 'to disarm the people—that was the best and most effective way to enslave them,' while Patrick Henry observed that 'The great object is that every man be armed' and 'everyone who is able may have a gun.' ...

"Numerous state ratifications called for adoption of a Bill of Rights as a part of the Constitution. The first such call came from a group of Pennsylvania delegates. Their proposals, which were not adopted but had a critical effect on future debates, proposed among other rights that 'the people have a right to bear arms for the defense of themselves and their own state, or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them, unless for crimes committed, or a real danger of public injury from individuals.... 'When New Hampshire gave the Constitution the ninth vote needed for its passing into effect, it called for adoption

of a Bill of Rights which included the provision that 'Congress shall never disarm any citizen unless such as are or have been in actual rebellion.' Virginia and North Carolina thereafter called for a provision 'that the people have the right to keep and bear arms; that a well regulated militia composed of the body of the people trained to arms is the proper, natural and safe defense of a free state.'

Drafting the Second Amendment

"When the first Congress convened for the purpose of drafting a Bill of Rights, it delegated the task to James Madison. Madison did not write upon a blank tablet. Instead, he obtained a pamphlet listing the State proposals for a Bill of Rights and sought to produce a briefer version incorporating all the vital proposals of these. His purpose was to incorporate, not distinguish by technical changes, proposals such as that of the Pennsylvania minority, Sam Adams, and the New Hampshire delegates. Madison proposed among other rights that:

"'The right of the people to keep and bear arms shall not be infringed, a well armed and well regulated militia being the best security of a free country; but no person religiously scrupulous of bearing arms shall be compelled to render military service in person.'

"In the House, this was initially modified so that the militia clause came before the proposal recognizing the right. The proposals for the Bill of Rights were then trimmed in the interests of brevity. The conscientious objector clause was removed following objections by Elbridge Gerry, who complained that future Congresses might abuse the exemption for the scrupulous to excuse everyone from militia service.

"The proposal finally passed the House in its present form: 'A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.' In this form it was submitted into the Senate, which passed it the following day. The Senate in the process indicated its intent that the right be an individual one, for private purposes, by rejecting an amendment which would have limited the keeping and bearing of arms to bearing 'for the common defense.'

Early Commentaries

"The earliest American constitutional commentators concurred in giving this broad reading to the amendment. When St. George Tucker, later Chief Justice of the Virginia Supreme Court, in 1803 published an edition of Blackstone annotated to American law, he followed Blackstone's citation of the right of the subject 'of having arms suitable to their condition and degree, and such as are allowed by law' with a citation to the Second Amendment, 'And this without any qualification as to their condition or degree, as is the case in the British government'. William Rawle's 'View of the Constitution' published in Philadelphia in 1825 noted that under the Second Amendment,

"'The prohibition is general. No clause in the Constitution could by a rule of construction be conceived to give to Congress a power to disarm the people. Such a flagitious attempt could only be made under some general pretense by a state legislature. But if in blind pursuit of inordinate power, either should attempt it, this amendment may be appealed to as a restraint on both.' . . .

"Joseph Story in his 'Commentaries on the Constitution' considered the right to keep and bear arms as 'the palladium of the liberties of the republic,' which deterred tyranny and enabled the citizenry

at large to overthrow it should it come to pass.

"Subsequent legislation in the Second Congress likewise supports the interpretation of the Second Amendment that creates an individual right. In the Militia Act of 1792, the second Congress defined 'militia of the United States' to include almost every free adult male in the United States. These persons were obligated by law to possess a firearm and a minimum supply of ammunition and military equipment. This statute, incidentally, remained in effect into the early years of the present century as a legal requirement of gun ownership for most of the population of the United States. There can be little doubt from this that when the Congress and the people spoke of a 'militia', they had reference to the traditional concept of the entire populace capable of bearing arms, and not to any formal group such as what is today called the National Guard. The purpose was to create an armed citizenry, such as the political theorists at the time considered essential to ward off tyranny. From this militia, appropriate measures might create a 'well regulated militia' of individuals trained in their duties and responsibilities as citizens and owners of firearms....

"When in 1837, Georgia totally banned the sale of pistols (excepting the larger pistols 'known and used as horsemen's pistols') and other weapons, the Georgia Supreme Court in *Nunn* v. *State* held the statute unconstitutional under the Second Amendment to the federal Constitution. The court held that the Bill of Rights protected natural rights which were fully as capable of infringement by states as by the federal government and that the Second Amendment provided 'the right of the whole people, old and young, men, women and boys, and not militia only, to keep and bear arms of every description, and not merely such as are used by the militia, shall not be infringed, curtailed, or broken in on, in the slightest degree; and all this for the important end to be attained: the rearing up and qualifying of a well regulated militia, so vitally necessary to the security of a free state.' ...

Individual Right to Keep and Bear Arms

"The Second Amendment right to keep and bear arms therefore, is a right of the individual citizen to privately possess and carry in a peaceful manner firearms and similar arms. Such an 'individual rights' interpretation is in full accord with the history of the right to keep and bear arms, as previously discussed. It is moreover in accord with contemporaneous statements and formulations of the right by such founders of this nation as Thomas Jefferson and Samuel Adams, and accurately reflects the majority of the proposals which led up to the Bill of Rights itself. A number of state constitutions, adopted prior to or contemporaneously with the federal Constitution and Bill of Rights, similarly provided for a right of the people to keep and bear arms. If in fact this language creates a right protecting the states only, there might be a reason for it to be inserted in the federal Constitution but no reason for it to be inserted in state constitutions. State bills of rights necessarily protect only against action by the state, and by definition a state cannot infringe its own rights; to attempt to protect a right belonging to the state by inserting it in a limitation of the state's own powers would create an absurdity. The fact that the contemporaries of the framers did insert these words into several state constitutions would indicate clearly that they viewed the right as belonging to the individual citizen, thereby making

it a right which could be infringed either by state or federal government and which must be protected against infringement by both.

"Finally, the individual rights interpretation gives full meaning to the words chosen by the first Congress to reflect the right to keep and bear arms. The framers of the Bill of Rights consistently used the words 'right of the people' to reflect individual rights—as when these words were used to recognize the 'right of the people' to peaceably assemble, and the 'right of the people' against unreasonable searches and seizures. They distinguished between the rights of the people and of the state in the Tenth Amendment. As discussed earlier, the 'militia' itself referred to a concept of a universally armed people, not to any specifically organized unit. When the framers referred to the equivalent of our National Guard, they uniformly used the term 'select militia' and distinguished this from 'militia'. Indeed, the debates over the Constitution constantly referred to organized militia units as a threat to freedom comparable to that of a standing army, and stressed that such organized units did not constitute, and indeed were philosophically opposed to the concept of a militia.

"That the National Guard is not the 'Militia' referred to in the second amendment is even clearer today. Congress has organized the National Guard under its power to 'raise and support armies' and not its power to 'Provide for organizing, arming and disciplining the Militia'. This Congress chose to do in the interests of organizing reserve military units which were not limited in deployment by the strictures of our power over the constitutional militia, which can be called forth only 'to execute the laws of the Union, suppress insurrections and repel invasions.' The modern National Guard was specifically intended to avoid status as the constitutional militia, a distinction recognized by 10 U.S.C.§*311(a).*

"The conclusion is thus inescapable that the history, concept, and wording of the second amendment to the Constitution of the United States, as well as its interpretation by every major commentator and court in the first half-century after its ratification, indicates that what is protected is an individual right of a private citizen to own and carry firearms in a peaceful manner."[5]

PROVISION

220

From the Third Amendment

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in a manner prescribed by law.

This provision guarantees the RIGHT of the American people to be protected from being compelled to harbor soldiers in their homes unless they consent, or unless it is required during wartime as prescribed by law.

In England this had been a perennial problem. The Petition of Right of 1628,

which Charles I was compelled to accept, complained that "companies of soldiers and mariners had been dispersed into divers counties, and the inhabitants, against their wills, had been compelled to take them into their houses and allow them there to sojourn against the laws and customs of this realm." British authorities were still attempting to do the same thing when troops were sent to the colonies.

The Declaration of Independence complains that George III was responsible for "quartering large bodies of armed troops among us" and of "keeping among us in times of peace standing armies without the consent of our Legislature."

In 1765 King George tried to quarter troops in the homes of the people of Massachusetts in connection with the enforcement of the Stamp Act. The people were ordered not only to quarter the troops in their homes, but to provide "fire, candles, vinegar and salt, bedding, utensils for dressing their victuals. . .without paying anything for the same." The people of Massachusetts flatly refused to obey the order.

The quartering of troops in Europe was considered worse than a plague. It placed each home under martial law. The soldiers who took over the homes were notorious for ravishing the women, destroying the furniture, and abusing the owners. When Louis XIV of France threatened to quarter troops in the homes of the Protestant Huguenots unless they returned to the state church, they fled in terror to various parts of the world rather than risk such an affliction.

Although this has never been a problem in the administration of military affairs within the United States, it was thought desirable by the Founding Fathers to insert this provision in the Constitution to discourage the national government from repeating the mistakes of King George III.

PROVISION 221

From the Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects shall not be violated.

This provision guarantees the American people the RIGHT to the privacy of their homes, their businesses, and all their private papers and effects.

It will be immediately apparent that in our own day, many of these rights of privacy have been seriously impaired. This has resulted almost entirely from the unauthorized invasion of the home, the business, and the private papers of the individual citizens by governmental agencies either enforcing federal regulations or collecting federal taxes under the Sixteenth Amendment.

Until the famous Barlow case, inspectors from the Occupational Safety and Health Administration (OSHA) were intruding into private plants and businesses without warrants to see if they could find violations of safety or health regulations.

The extent to which the Internal Revenue Service has invaded the privacy of citizens to make certain each is paying his or her fair share is a matter of great concern through the entire country. However, the major fault is with the law rather than the IRS. The collection of direct taxes, such as income taxes, is impossible without virtually wiping out the guarantees set forth in the Fourth Amendment.

PROVISION 222

From the Fourth Amendment

The right of the people to be protected against unreasonable searches and seizures shall not be violated.

This provision guarantees the RIGHT of the people to be protected from unreasonable searches and seizures.

Here again, the legalized searches and seizures connected with the regulatory and taxing laws has seriously strained the protection intended by this provision. There has also been a serious invasion of privacy through the use of telephone wiretaps, electronic listening devices installed in offices and homes, and tampering with the mail.

It should be noted that this provision protects a person only in cases where the invasion of privacy is "unreasonable." Consider, for example, these situations:

1. It is not considered unreasonable for the police to check an offender's car or immediate premises at the time of his arrest and pick up any property belonging to the offender that is considered to be "evidence."
2. It is not considered unreasonable for the police to pursue a suspected criminal across private property in order to apprehend him.
3. It is not considered unreasonable for a person to check out a vacationing neighbor's premises under suspicious circumstances.

Obviously, however, it would be unreasonable to open the mail, tap the telephone wire, or put another citizen under electronic surveillance.

The law makes two exceptions to this rule. One is where a human life is in danger, and the other is where the case involves a serious threat to the security of the nation.

Just so the student may appreciate the earlier rights of privacy guaranteed to American citizens, let us refer to the 1886 case of *Boyd* v. *United States*,[6] which held:

1. That a compulsory production of a person's private papers (i.e., by subpoena) was an unreasonable search and seizure within the meaning of the Fourth Amendment and was therefore forbidden.
2. That, in substance, such compulsory seizures of private papers compelled the defendant to be a witness against himself in violation of the Fifth Amendment.
3. That, because it was a violation of the Fifth Amendment, it was also an *unreasonable* search and seizure under the Fourth Amendment.

Such was the protection of American rights until the Sixteenth Amendment was passed in 1913.

PROVISION

223

From the Fourth Amendment

No warrant shall be issued by the courts unless it is based on probable cause, supported by an oath or affirmation, and describes the particularity of the place to be searched and the person or things to be seized.

This provision guarantees all Americans the RIGHT to be free from arrest except on the basis of a warrant which has been properly issued.

However, no warrant is required if the person is observed committing the crime and he is apprehended by those who witnessed the offense.

Among the most offensive devices used by the Crown against the colonies were the writs of assistance, general warrants allowing officials to engage in "fishing expeditions," ostensibly to discover evidence of smuggling contraband goods. James Otis of Massachusetts became celebrated in 1761 by contesting this form of tyranny in the courts.

PROVISION

224

From the Fifth Amendment

No person shall be required to answer to a capital or infamous crime unless the charges have been formally stated in a presentment or an indictment by a grand jury.

This provision gives the people the RIGHT not to be required to answer for a capital or infamous crime unless the case has been heard by a grand jury and formal charges have been issued either in the form of a presentment or an indictment.

A capital crime is one punishable by death. An infamous crime is one punishable by death or imprisonment.

A grand jury consists of twelve to twenty-three persons called by the sheriff of the county or by the United States marshal to hear witnesses respecting any subject that may properly be brought before them as a violation of the law. If they believe a person is guilty, they return a "true bill," or indictment, which is a formal charge indicating that the grand jury had "reasonable cause" to believe that the person had committed the offense as charged. If the grand jury does not believe there is adequate evidence against him, they return a "no bill." Where a person has been indicted for a federal offense, he subsequently stands trial before

a petit jury of twelve persons.

Although the grand jury has been retained by the federal government, it has been abolished in a number of states. In its place the prosecuting attorney simply files an "information" against a person he wishes to bring to trial.

A "presentment" by a grand jury is a formal declaration against the offender based on an investigation by grand jury members. An "indictment" is a formal declaration that the jury has heard charges brought by the prosecuting attorney and believes there is reasonable cause to believe that the person should stand trial for the allegations against him.

This provision gives the accused a number of advantages.

1. It protects him from the reckless accusations of malevolent individuals who know they can greatly damage the reputation of an individual simply by making the charge of some heinous offense against him.
2. By forcing the prosecutor and the witnesses to screen the facts through the grand jury, many groundless and seriously damaging rumors have been exposed and dismissed before they were given extensive publicity.
3. The formality of a grand jury hearing also compels the prosecutor to pinpoint the charges and demonstrate that he has witnesses and tangible evidence sufficiently conclusive to warrant a trial.

PROVISION

225

From the Fifth Amendment

The only exception to the grand jury hearing shall be in the case of a military court-martial where the accused is a member of the armed services and the crime is a military offense during a time of war or great public danger.

This provision gives American military personnel the RIGHT to be tried before a jury in a civilian criminal court for a capital or infamous crime, unless the offense is related to military duty in time of war or great public danger.

Because a court-martial does not provide the protection of a jury, this provision was considered extremely important to treat members of the military like any other citizen unless a crime was connected with military duties.

PROVISION 226

From the Fifth Amendment

No person shall be subject to double jeopardy for the same offense.

This provision gives each individual the RIGHT to be permanently free of any further prosecution once he or she has been processed through the trial procedure.

A person is considered to have been put in jeopardy when brought before a court of competent jurisdiction upon an indictment or information in adequate form, and a jury has been impaneled and sworn to try him. If the jury finds that it does not have sufficient evidence to convict, the trial cannot be postponed while the prosecutor seeks to discover additional evidence. Since the trial must then proceed to verdict, the defense can move for a directed verdict of not guilty where the prosecution has not established the basic elements of the crime as charged.

Of course, a person is not put in jeopardy when a jury fails to agree and the jury has been discharged by the court for that reason. The accused can therefore be tried again with a new jury.

The same is true where a person is convicted but the case is reversed because of some technicality by a higher court. Once more he may be tried for the same crime but before a different jury.

This provision was inserted in the Constitution to prevent Americans from being prosecuted several times for the same crime, as had happened in England. An English prosecuting attorney who could not get a conviction on existing evidence would have the prisoner reindicted after he had accumulated more evidence.

PROVISION 227

From the Fifth Amendment

No person shall be compelled in any criminal case to be a witness against himself.

This provision guarantees every American the RIGHT not to be a witness against himself unless he voluntarily decides to do so.

Of course a person may waive the priv ilege and, if the statute of limitations bars prosecution for the crime, he can be compelled to answer since he cannot be prosecuted for what he discloses. It has also been held that he cannot claim protection under the Fifth Amendment if he has been pardoned, for that prevents prosecution of the crime in question.

Compulsory self-incrimination similar to that of the Inquisition existed for 400

years after the Magna Charta. It even gained some recognition among the early American colonists. Mrs. Anne Hutchinson of Massachusetts was tried for heresy in 1673 by Governor John Winthrop without the governor even being aware of any privilege against self-incrimination.

PROVISION 228

From the Fifth Amendment

No person shall be deprived of life, liberty, or property without due process of law.

This provision guarantees the RIGHT of every American against the taking of his life, liberty, or property without due process of law.

This same provision is included in the Fourteenth Amendment to protect United States citizens from a loss of their rights by any of the states.

"Due process of law" is another descriptive name for legal, judicial, and governmental fair play in dealing with its citizens.

"Due process" has been broadly interpreted so that it does not necessarily require a trial in a court. When a person has had a full hearing before the Secretary of the Interior on some question concerning public lands, it is held that the decision of the Secretary may be final and that the complainant cannot be heard in court. The same would be true with other quasi-judicial hearing boards such as the Federal Communications Commission, the Interstate Commerce Commission, and so forth. Of course, most decisions of these boards are subject to appeal, but not all. Administrative law has introduced a multitude of procedures which could expose Americans to a serious loss of rights.

This provision applies not only to the courts but to the legislative and executive branches of the federal government as well. None of these can confiscate property or deprive a person of his life or liberty without due process of law.

PROVISION 229

From the Fifth Amendment

No private property shall be taken for public use without just compensation.

This provision gives every citizen the RIGHT to be protected from the exercise of eminent domain against his property unless he is given just compensation for the same.

This type of provision appeared in the early Roman law and was also incorporated in the Magna Charta. Ancient kings and emperors, who considered the life and property of their people to be subject

to their whims, often exercised their sovereign powers to expropriate or confiscate the land of their subjects. Modern governments tend to do the same. This provision was inserted into the Constitution to protect American citizens from this type of abuse.

It is interesting that in 1923 a minimum wage law which required an employer to pay a certain wage, regardless of the earning ability of the employee, was held to be unconstitutional under this provision, since it took private property for the public welfare in violation of this clause. It was reversed in 1937 by the Supreme Court under the influence of New Deal policies.

PROVISION 230

From the Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.

This provision entitled an accused person to the RIGHT of a speedy, public trial.

A "speedy trial" is one without unreasonable delay. A defendant may not demand a trial until the prosecuting attorney has had a reasonable time to prepare his case. However, the Supreme Court has held that in time of insurrection, a person may be held indefinitely without trial until public peace has been restored. Temporary incarceration, the Supreme Court felt, is a far less stringent means of protecting the community than resorting to the more extreme measures allowed under martial law. (Martial law permits a state governor to order insurrectionists to be killed if necessary to protect life or to prevent widespread looting and restore peace.)

The public trial is for the benefit of the accused and not the public. Therefore, if publicity would not be in the interest of justice, the court may exclude all but a few of the public in the interest of the defendant's rights.

PROVISION 231

From the Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to have a trial before an impartial jury in the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law.

This provision gives an accused person the RIGHT to be tried by an impartial jury in the state and district where the crime was committed.

It will be recalled that in the body of the Constitution, Article III, section 2 pro-

vided that "the trial of all crimes, except in cases of impeachment, shall be by jury." This is therefore the second time this guarantee of a constitutional right has been mentioned.

This same provision in Article III, section 2 also provides that the trial shall take place in the state where it was committed. The present provision narrows it down to the "district" of the state where it occurred.

The importance of this provision is borne out by the records of many judicial hearings of the past where there has been an attempt to breach these protective barriers.

PROVISION 232

From the Sixth Amendment

In all criminal prosecutions, the accused shall be informed of the nature of the crime with which he or she is charged.

This provision gives the accused the RIGHT to have an explanation of the nature of the crime of which he or she is accused.

A person is considered to be informed of the charge against him by having a copy of the grand jury's indictment presented to him. He is then given a reasonable time to prepare his defense. The same thing happens when a federal prisoner has been arrested and is brought before a judicial officer for his "preliminary hearing." At that time the charge is read against him and he is invited to plead "guilty" or "not guilty."

PROVISION 233

From the Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to be confronted by the witnesses against him and ask questions of the same.

This provision gives an accused person the RIGHT to be confronted by those bringing accusations against him or her and to have the opportunity of cross-examining them.

Under the English system of law there was an odious practice of having witnesses make out depositions (written testimonies) which were read to the accused at the time of his trial. This deprived the defendant of the opportunity to confront his witnesses and cross-examine them. It was on the basis of a mere deposition that Sir Walter Raleigh was convicted of treason and beheaded.

In the old Star Chamber court of En-

gland, witnesses stood behind a door and testified through a tiny hole without being seen. The Founders were well acquainted with practices such as these when they included this protective provision in the Constitution.

The one exception to the rule against the admission of a written accusation is the declaration by a dying witness, which may be read against the accused on the ground that the "solemnity of the circumstances" tends to make the testimony creditable.

PROVISION

234

From the Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to have compulsory process to obtain witnesses in his favor.

This provision gives an accused person the RIGHT to obtain witnesses in his behalf through the compulsory process of the court.

The Constitution allows the defendant to use the good offices of the court and the enforcement machinery of a U.S. marshal's office to compel witnesses to participate in the trial in his defense.

This is particularly important in criminal cases, since there is a severe reluctance on the part of others to become involved in such cases. Even when they have important knowledge concerning the facts of the case, they seldom feel duty-bound to come forward without a subpoena from the court.

PROVISION

235

From the Sixth Amendment

In all criminal prosecutions, the accused shall have the right to counsel to assist him in his defense.

This provision gives the accused the RIGHT to the protection of an attorney to guide him through his defense, whether or not he can afford one.

Provision is made in each judicial district to have certain attorneys available (often the younger, less experienced ones) who can be appointed by the court to assist the accused. Of course, if the case is technical and the offense is serious, the court will appoint one of the more experienced attorneys in the area to defend him.

It is indicative of the maturity of the American judicial system that in recent years there has been an increasing emphasis on the necessity of having the assistance of counsel both before and during the trial.

PROVISION 236

From the Seventh Amendment

In suits of common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

This provision gives a defendant in a civil case the RIGHT to have a jury just as in criminal cases (provided, of course, that the suit involves a sum of $20 or more).

The Founders had originally provided for a jury trial in criminal cases but had not included civil cases for two reasons:

1. Civil procedures were so varied in the states that it was not considered justifiable to impose the jury system on those that were using judges to decide both civil and equity cases.
2. It was felt that judges would be more competent to assess damages and liabilities in damage suits and contract cases than a jury.

Since this amendment was adopted, it was feared that juries might be unreasonable in assessing damages against wealthy individuals, professional people, or corporations. In many cases, however, it has turned out that the judges have awarded higher damages than juries.

Civil cases under administrative law are not included among "suits of common law"; therefore, no juries are called. Many aspects of Ruler's Law have arisen under the discretionary powers of administrative law, which has become a cause of great concern.

PROVISION 237

From the Seventh Amendment

No fact tried by a jury shall be otherwise reexamined in any court of the United States, except as provided by the rules of common law.

This gives the jury the RIGHT to have its facts "as found" remain unmolested during the appeal process.

This also means that no judge of a trial court can substitute his opinion of the facts for that of the jury, nor can an appellate court set aside the jury's findings and make a final order on its own.

In the case of a mistrial, the court may order a hearing before another jury, or a new trial can be ordered by an appellate court if there was an error of law committed by the trial court.

PROVISION

238

From the Eighth Amendment

In criminal cases, excessive bail shall not be required.

This provision gives a person arrested for a bailable crime the RIGHT to be released without providing a bail which would be considered excessive and unreasonable.

"Excessive" bail is requiring a prisoner to put up a bond which is so high that he cannot possibly provide it and thereby regain his freedom pending the date of the trial. Of course, a heavy bail or refusal to grant bail to a person who has committed a serious crime or is otherwise dangerous to the community may be considered "reasonable and necessary."

PROVISION

239

From the Eighth Amendment

In criminal cases, excessive fines shall not be imposed.

This provision gives the accused the RIGHT to have penalties imposed which are "reasonable" and therefore not excessive.

Excessive fines are described in the Magna Charta as those penalties which constitute a forfeiture, or deprive a man of his ability to earn a living or pursue his calling and business. It further provided that the penalty for each crime should be according to the seriousness of the offense.

PROVISION

240

From the Eighth Amendment

In criminal cases, cruel and unusual punishment shall not be inflicted.

This provision gives a convicted criminal the RIGHT not to be subjected to cruel and unusual punishment.

At the time of the adoption of the Constitution the British penalty for high treason was having the convicted person

"hanged by the neck and then cut down alive, then he was disemboweled while yet living. His head was cut off and his body divided into four parts for disposition by the King."[7]

The English law also provided for cutting off the ears, flogging, cutting off hands, castrating, standing in the pillory, slitting of the nose, and branding on the cheek. There were also certain situations for which there was "perpetual imprisonment."

PROVISION

241

From the Ninth Amendment

The enumeration of certain rights in this Constitution shall not be interpreted to repudiate, deny, or disparage other rights belonging to the people, but which have not been enumerated.

This provision gives the American people the RIGHT to claim any and all prerogatives which belong to them, whether or not they are enumerated in this Constitution.

One of the reasons the framers of the Constitution did not want to enumerate a Bill of Rights was that they feared that the enumeration would never be complete and that other rights might therefore be lost because they were not included. This provision was designed to be a catch-all clause to protect all other rights which had not been enumerated.

Since the national government is one of delegated and enumerated powers, it was important to have this provision so that all rights of citizens could be protected, whether or not they had been mentioned in the Bill of Rights.

PROVISION

242

From the Tenth Amendment

All powers not specifically delegated to the Congress of the United States by this Constitution, nor prohibited to the states by this Constitution, are reserved to the states or to the people.

This provision gives the states and the American people the RIGHT to retain all powers not delegated to the federal government, and which are not prohibited by the Constitution to be exercised by the states.

This provision was designed to protect states' rights as well as the rights of individual citizens. Each sovereign state retained unto itself all powers that had not been given to the national government.

Unfortunately, with the passing of the Seventeenth Amendment (wherein Senators are elected by popular vote rather than being appointed by the state legislatures), the states lost the right to be represented in the Senate, where they had held a veto power over any legislation which violated states' rights.

Today we have reached a point in history which Jefferson said in 1823 he hoped would never come:

"I ask for no straining of words against the general government, nor yet against the states. I believe the states can best govern our home concerns and the general government our foreign ones. I wish, therefore, to see maintained that wholesome distribution of powers established by the Constitution for the limitation of both; and never to see all offices transferred to Washington."[8]

In 1911 the Supreme Court said, "Among the powers of the state not surrendered—which powers therefore remain with the state—is the power to so regulate the relative rights and duties of all within its jurisdiction as to guard the public morals, the public safety, and the public health, as well as to promote the public convenience and the common good."[9] Subsequent amendments to the Constitution and radical interpretations by the Supreme Court almost completely obliterated the clear division of authority which the Tenth Amendment was designed to preserve.

The encroachment of the national government from Washington in the local affairs of the people is rapidly becoming well-nigh universal. The federal government is involved in schools, roads, housing, welfare, hospitals, banks, transportation, communications, air, water, land, natural resources, and so on.

Only recently have careful studies begun to reveal how counterproductive and wasteful the federalization of state responsibilities has turned out to be.

PROVISION 243

From the Eleventh Amendment

The judicial power of the United States shall not extend to cases either in law or in equity which are brought against one of the states by citizens of another state or by the subjects of any foreign power.

This provision gives each state the RIGHT *not* to be sued by citizens of other states without its consent.

This amendment has an interesting historical background.

When the nation was younger the states were militantly alert to protect themselves from any intrusion by the federal government. Under the principle of dual sovereignty, the states maintained that they should decide whether or not they would allow themselves to be sued, just as the United States can be sued only with its consent. Therefore, when a citizen of South Carolina tried to sue the state of Georgia, and used the federal courts as a judicial arena in which to settle

the matter, the state of Georgia felt that it was being forced into a suit without its consent. All of the states were very nervous about the situation because many of them were under heavy financial embarrassment following the ravages of inflation in the post-Revolutionary period and many of them were deeply in debt.

Two days after the decision in this case, a resolution was offered in Congress designed to amend the Constitution so that there would be no cases like this in the future. However, this amendment did not actually take effect until five years later—January 8, 1798.

PROVISION

244

From the Twelfth Amendment

Electors voting for the President and the Vice President shall meet in their respective states and shall vote on one ballot for President, and on a separate ballot for Vice President; they shall then send a signed, certified list of the outcome of the balloting to the president of the Senate.

This provision gave electors the RIGHT to vote for the President and Vice President separately.

The Twelfth Amendment was designed to correct the deficiencies in the electoral college system. Article II, section 1 provided that the electors were invited to vote for "two persons," without separately designating either of them for President or Vice President. The idea was that the one who received the most votes would automatically become the President and the second in line would be assigned the office of Vice President. If none of the candidates had a majority, then Congress would select these officers from among the top five candidates. The Twelfth Amendment changed this procedure in the following respects:

"The electors shall meet in their respective states and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves."

This provision required the electors to vote on one ballot for President and on a separate ballot for Vice President.

"But in choosing the President, the votes shall be taken by states, the representation from each state having one vote."

This meant that if the electors voted 52 percent for one candidate and only 48 percent for another, the entire vote of all the electors of that state would go for the candidate represented by the majority. This is what it means to have the votes taken "by states" with each state having "one vote." This procedure often gives a totally unbalanced picture of the election returns, since a close vote may actually look like a landslide. It has been suggested (but never adopted) that the number of electors voting for each candidate be

shown so that the country can better approximate the strength of each man who ran.

Where there are only two major parties there is no question about one of them having a majority; however, the framers of the Constitution anticipated the possibility of several parties and required that the person who is elected must have a "majority" of the electoral votes. Otherwise the House of Representatives must choose the President by ballot from the three leading contenders; and if a Vice President does not have a majority, the Senate makes the choice from the two top candidates.

PROVISION

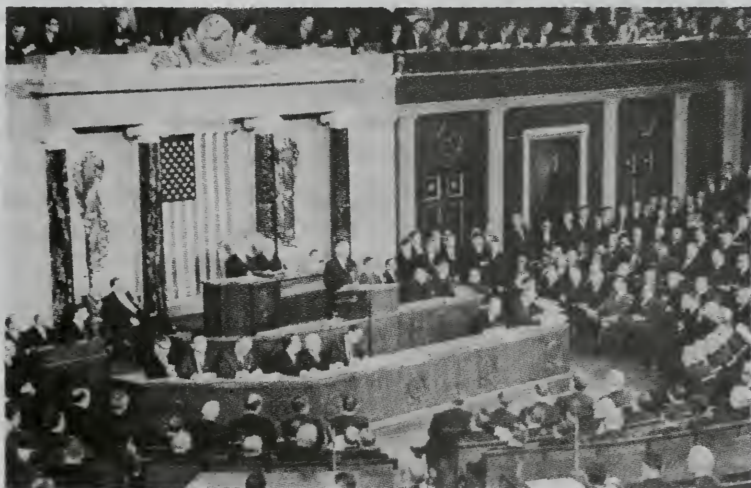
245

From the Twelfth Amendment

The president of the Senate shall open the reports from the electors of the various states and tally the totals for President and the totals for Vice President.

This provision gives the president of the Senate the RIGHT to count the ballots, and it gives the Congress — meeting in joint session — the RIGHT to observe the opening of the ballots and the counting of the votes for each candidate.

In this modern electronic age, the official counting of the ballots in the presence of the entire House and Senate merely confirms in a tangible way what the country has known ever since the day after the election. Nevertheless, it is a very impressive ceremony as the president of the Senate officially announces who will be inaugurated two weeks later on January 20.



The Senate was assigned the task of counting the votes from the electoral college.

PROVISION 246

From the Twelfth Amendment

If no person obtains a majority, then the names (not to exceed three) of those having the highest vote shall be submitted to the House of Representatives, and the House of Representatives shall immediately choose, by ballot, the President, with the delegation from each state casting one vote. To fulfill this assignment, two-thirds of all the states must be represented with one or more persons in attendance.

This provision gives the House of Representatives the RIGHT to select the President of the United States in case none of the candidates has accumulated a majority of the electoral votes.

As mentioned earlier, so long as there are only two political parties, one of the candidates will receive a majority of the electoral votes. However, if there were several parties, the House of Representatives might select the President most of the time.

PROVISION 247

From the Twelfth Amendment

If no person running for Vice President has received a majority of the votes, then the two receiving the highest number of votes shall be submitted to the Senate, which shall then choose the Vice President. A quorum for the purpose of choosing a Vice President shall be at least two-thirds of the whole number of Senators. A majority of those in attendance will constitute a sufficient number to elect the Vice President.

This provision gives the Senate the RIGHT to select the Vice President when none of the candidates has a majority of the electoral votes.

Notice that two-thirds of the whole Senate must be in attendance, and a majority of these could make the selection. This means that sixty-seven Senators could constitute a quorum and as few as thirty-four Senators could choose the Vice President.

PROVISION

248

From the Twelfth Amendment

No person shall be eligible for Vice President of the United States who does not have all of the constitutional qualifications required for the office of President.

This provision gives the American people the RIGHT to have a replacement for the President, in case of his loss or removal, who meets all of the constitutional requirements for the office of President.

It will be recalled that originally no one ran for Vice President. All candidates had to qualify for the office of President. The one who came in second was designated as Vice President. Under the Twelfth Amendment, however, the Vice President is elected separately. It was therefore important to specify that his required qualifications as a candidate for Vice President must be identical with those of the President, whose place he might someday be required to occupy.

A Note Concerning the Inaugural Date of March 4th

In the Twelfth Amendment reference is made to March 4 as the inaugural date for the President. This date has an interesting history. The Continental Congress had designated "the first Wednesday of March, 1789," as the date when the new government should begin operations. This happened to fall on March 4. Although President Washington was not sworn in for his first term until April 30, he did use March 4 for his swearing in ceremony as he commenced his second term. This became an established precedent and therefore appears in the Twelfth Amendment, which was adopted in 1804. This remained the presidential inaugural date until 1933, when the Twentieth Amendment changed it to January 20.[10]

---

1. *The Right to Keep and Bear Arms,* Report of the Senate Subcommittee on the Constitution (Washington: U.S. Government Printing Office, February 1982), p. vii.
2. Quoted in ibid., p. 5.
3. Quoted in ibid., p. 6.
4. Quoted in ibid., p. 5.
5. Ibid., pp. 1–12.
6. 116 U.S. 616.
7. Norton, *The Constitution of the United States,* p. 224.
8. Bergh, 15:450–51.
9. Norton, *The Constitution of the United States,* p. 227.
10. John Fiske, *The Presidents of the United States,* (New York: D. Appleton and Co., 1898) pp. 19–21.

CHAPTER

AMENDMENTS THIRTEEN THROUGH SIXTEEN

Congress, in its anxiety to codify freedom for every person born under the protection of the United States (and to liberate those who had been subject to involuntary servitude), undertook to pass three amendments (the thirteenth, fourteenth, and fifteenth) so that universal freedom would be part of the Constitution. Unfortunately, some aspects of their effort provided more heat than light and still remain the cause of much confusion and litigation—not only over the issue of freedom, but because the Fourteenth Amendment has been used by the federal government to greatly enlarge its jurisdiction over the states.

Then there is the Sixteenth Amendment, which, next to Prohibition, turned out to be the most unpopular of all the amendments.

Each of these four amendments will be considered in this chapter.

PROVISION 249

From the Thirteenth Amendment

Neither slavery nor involuntary servitude shall exist within the United States or any place subject to its jurisdiction.

This provision gives every human being living in the United States and its territories the RIGHT to be free.

Congress had previously abolished slavery in the District of Columbia and in the territories. It had also repealed a fugitive slave law and had given freedom to Negroes who had served in the Union armies.

The Emancipation Proclamation had not liberated all of the slaves. It had freed the slaves in the seceding states of the Confederation but it had provided for exceptions in certain parishes (counties) in Louisiana, a few counties in Virginia, and the entire state of Tennessee. Furthermore, the slaves were not liberated in Maryland, Delaware, Kentucky, and Missouri, which had remained in the Union. In addition to this, the validity of this proclamation under the war powers of the President was seriously questioned.

To remove any possible doubt as to the liberation of slaves everywhere within the United States, this amendment was adopted.

It is interesting that in the history of the United States not all of the slaves have been black. In the early settlements in America many of the colonies had white slaves or persons who had been sold into peonage. In fact, English felons were sold to the colonists to work out their terms of imprisonment in servitude.

PROVISION 250

From the Thirteenth Amendment

The only exception to the prohibition against involuntary servitude shall be in the case of a convicted criminal who shall be sentenced to involuntary servitude as part of his punishment.

This provision gave the courts the RIGHT to sentence convicted criminals to work under conditions of involuntary servitude as part of their punishment.

But the convict cannot be leased out to a private contractor who pays his fine. It has been held unconstitutional for a criminal to have his fine paid by someone and then be forced to work until the fine is paid.

However, the court has allowed cities and counties to assign prisoners to work out their fines on the street and roads, on public parks, and so forth.

PROVISION

251

From the Thirteenth Amendment

Congress shall have the power to enforce these provisions by appropriate legislation.

This provision gave the Congress the RIGHT to pass whatever legislation was necessary to carry out the provisions of this amendment.

Under this amendment Congress passed the Civil Rights Act of March 1, 1875. The part of this act which allowed the federal government to take action against "individuals" who were guilty of discrimination against Negroes was held unconstitutional on the ground that the Thirteenth Amendment gives the federal government power to regulate only states and not individuals. The court said that provisions of this kind came within the police power of the state. However, beginning with a series of civil rights acts in 1963, the jurisdiction of the federal government was broadly expanded to enforce civil rights along practically every dimension of American life. The new acts, with Supreme Court support, overturned the ruling of 1875 and allowed the federal courts to enforce their decrees against individuals, schools, labor unions, restaurants, hotels, major industries, and other enterprises, both public and private.

PROVISION

252

From the Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are hereby declared to be citizens of the United States and also of the state wherein they reside.

This provision gives every human being born or naturalized in the United States the RIGHT to citizenship in both the United States and the state where that person resides.

The only exceptions are children born to foreign diplomats and children born to enemies during wartime occupation.

It is interesting that in spite of this amendment, American Indians living on reservations could not be citizens or have their children considered citizens until 1924.

This amendment was found to be necessary because in spite of the Thirteenth Amendment, which was ratified December 6, 1865, there continued to be a number of abuses of former slaves. In some states they were "forbidden to appear in the towns in any other character than menial servants." And they were required to reside on cultivated land "without the right to purchase or own it." They were excluded from many occupations because of their race and were not permitted to give testimony in the courts in

cases where a white man was a party. There were also heavy fines imposed on vagrants and loiterers, who, if unable to pay the fines, were sold under a work contract to the highest bidder. This was done on the assumption that while the federal government could abolish slavery *per se*, only the state had authority to regulate the affairs of individuals.

It was because of the serious abuses of civil rights among some of the states that a number of civil rights bills were launched —beginning in 1963—and these rapidly transferred a great deal of jurisdiction from the states to the federal courts. This had been avoided in the past because many felt it would give the federal courts so much power that they might become abusive themselves. Furthermore, many authorities expressed particular apprehension because the new laws would give the federal courts enforcement power over individuals as well as public and private institutions. Nevertheless, Congress passed the laws hoping the courts would exercise restraint.

PROVISION 253

From the Fourteenth Amendment

No state shall pass any law which abridges the privileges or immunities belonging to all citizens of the United States.

This provision guaranteed every American the RIGHT to enjoy all of the privileges and prerogatives of all other citizens of the United States.

It will be observed that this merely repeats what the Constitution had already stated in Article IV, section 2: "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

In both instances the Constitution refers only to the privileges and immunities belonging to a person as a citizen of the United States. It does not prohibit the states from altering, regulating, or restricting privileges and immunities related to state citizenship.

Examples of privileges and immunities on the state level would be such things as working hours, labor laws affecting women and children, size of a jury, voting in city, county, or state elections, and so forth.

Examples of privileges and immunities on the federal level (belonging to national citizenship) would include such things as:

1. Access to the resources of the seat of government
2. Access to writs of habeas corpus
3. Protection while traveling abroad
4. Right to freely engage in interstate travel
5. Right to petition Congress
6. Right to vote in national elections
7. Right to enter public lands
8. Protection while in federal custody
9. Right to complain of federal violations
10. Right to engage in interstate commerce
11. Freedom of religion
12. Freedom of speech
13. Freedom of the press
14. Freedom to assemble
15. Freedom of association

PROVISION

254

From the Fourteenth Amendment

No state shall deprive any person of life, liberty, or property without due process of law.

This provision guarantees the RIGHT of every person (not just citizens) living in the United States and her territories to the protection of life, liberty, and property, none of which can be taken away without due process of law.

Once again, this provision is simply a repetition of what was already guaranteed in the Fifth Amendment: "No person shall be...deprived of life, liberty, or property, without due process of law."

"Due process" means a full hearing as provided by law. Due process does not necessarily require a jury unless that is the established process for the type of problem involved. Nor is a formal trial necessary for due process, if there is a full and fair hearing and an opportunity for the determination of the merits of the case.

PROVISION

255

From the Fourteenth Amendment

No state shall deny to any person who lives within its jurisdiction the equal protection of the laws.

This provision guarantees the RIGHT to every person (not just citizens) living within a state to the equal protection of the laws.

It is impossible to provide equal protection against the violation of the law, but once a law becomes operative as a result of a crime or a tort, the law should be equally administered regardless of race, sex, religion, citizenship, or national origin.

The federal courts have also developed a doctrine called "substantive due process," based on the Fifth and Fourteenth Amendments, which has appropriated new federal jurisdiction by applying most of the federal Bill of Rights to state governments.

It is also this provision which makes any prohibitions or mandatory laws aimed at specific groups or classes unconstitutional. For example, excluding certain persons from participation in the Homestead Act was declared unconstitutional.

On the other hand, requiring all voters to be able to read was not considered invalid.

A far more questionable ruling was the one upholding the graduated income tax. This ruling deprives a person of a certain amount of his property rights just because he or she has happened to accumulate enough property to put them in a graduated income tax bracket. This will be discussed in more detail under the Sixteenth Amendment.

PROVISION 256

From the Fourteenth Amendment

Representatives in the Congress shall hereafter be apportioned according to the actual number of persons in each state.

This provision gives each state the RIGHT to have a full count of all persons living within its borders when taking a census of its population.

This provision was designed to eliminate the previous arrangement of counting slaves as three-fifths of a vote. This had not been done as a demeaning gesture against slaves but simply as a compromise over the issue of taxes and representation. The South wanted to count all slaves in calculating the population for the purpose of determining the number of representatives in the House, but it did not want to count the slaves at all in apportioning taxes "according to population." It was finally agreed that slaves would be counted as three-fifths of a vote for both representation and taxation. The Fourteenth Amendment eliminated this practice.

PROVISION 257

From the Fourteenth Amendment

In calculating the total population for the purpose of apportioning representation, the census shall not include Indians unless they are paying taxes.

This provision gave the Indians the RIGHT to remain members of their various tribes and nations and not be counted as voting citizens unless they were paying taxes and wished to participate in the voting process.

The Indians always insisted that they were independent nationalities and the United States government therefore made treaties with them as though they were foreign nations.

In a short time, however, it became obvious that the Indian culture was part of the American culture, and that the native Indian population should no longer be treated as outsiders. In 1924 the Congress therefore passed an act making the Indians living on the reservations full-fledged citizens, entitled to all of the privileges and responsibilities of citizenship.

PROVISION 258

From the Fourteenth Amendment

If the right to vote in any state or federal election is denied to any male inhabitants who are qualified to vote, the basis of representation for that state shall be reduced by the percentage of citizens so deprived of this privilege compared with the total number of qualified voters.

This gives each state the RIGHT to have all qualified voters in the other states granted the privilege of expressing their choices at the polls. Should any state violate this provision, it will be penalized by reducing the basis for its representation in Congress.

This was a penalty clause designed to punish those states that might try to somehow prevent the former slaves from voting. As many authorities have pointed out, the Fourteenth Amendment—the longest of all the amendments—was poorly written, and composed in a spirit of anger and revenge rather than the careful, calculated calmness of the mature legislator. As it turned out, this provision was an impractical procedure and was never utilized.

PROVISION 259

From the Fourteenth Amendment

No person shall be allowed to serve in either a federal or a state office who has previously occupied a federal or state office and taken an oath to uphold the Constitution of the United States, but has thereafter participated in a rebellion against the United States or given aid and comfort to its enemies. The Congress may, by a vote of two-thirds of each house, remove such disability.

This provision gives each state and the Union the RIGHT to exclude any person from being elected or appointed to public office who had been an official and taken the oath to uphold the Constitution, but had thereafter participated in the rebellion against the Union. It also gave the Congress the RIGHT to remove this disability by a vote of two-thirds.

It is obvious from this provision that the radical leadership of the Congress which wrote the Fourteenth Amendment had very little of the spirit of healing and

reconciliation exhibited by Lincoln, or even by General Grant when Lee surrendered. As a result, the South was deprived of its experienced, traditional, and most responsible leadership. Except for the issue of slavery, some of this leadership provided the nation with some of its best elements of political wisdom prior to the war.

The Fourteenth Amendment was ratified on July 9, 1868, and on Christmas Day of the same year, President Andrew Johnson wiped out the effects of this vindictive provision by exercising his pardoning powers. He issued a proclamation of full amnesty, granting "unconditionally and without reservation" to all who had been engaged in the Southern cause, a "full pardon."

PROVISION

260

From the Fourteenth Amendment

Debts of the United States which were incurred while suppressing insurrections and rebellions shall not be questioned, nor shall pensions and bounties for services rendered in connection therewith.

This provision gave any person with claims against the United States as a result of the Civil War the RIGHT to payment without question.

PROVISION

261

From the Fourteenth Amendment

Neither the United States nor any individual state shall pay any debt or obligation which was incurred in aiding the rebellion against the United States, since all such debts, obligations, and claims shall be considered illegal and void.

This provision gave any person with an obligation incurred by the Confederacy during the rebellion the RIGHT to refuse payment on the ground that the claim was unlawful and void.

This section provides that all obligations, including the redemption of Confederation currency, were now null and void. Anyone who had loaned money to the Confederacy could not now collect it.

All such debts were illegal and void because they implemented the rebellion against the Union. This wiped out a debt of $1.4 billion which the Confederacy owed to their own citizens, as well as to England, France, and other countries.

The Southern states also lost the value of their emancipated slaves. At the same time the South had to shoulder its proportionate expense of the war incurred by the Union.

PROVISION 262

From the Fourteenth Amendment

No claim shall be acknowledged by the United States nor by any of the individual states for losses resulting from the emancipation of slaves or for losses suffered from trying to prevent the emancipation of the slaves.

This provision gave the United States and the individual states the RIGHT to reject any claims by slave owners that they had been deprived of their slaves without "due process," or without compensation for the same. All such claims were to be considered illegal and void by the courts.

Prior to the war there had been a number of plans for the emancipation of the slaves through compensation to their owners, but these had been rejected. Since the slaves had now been emancipated by force of arms as well as by law, no slave owner would be allowed to claim that he lost his slaves without due process and without compensation.

PROVISION 263

From the Fourteenth Amendment

The Congress of the United States shall have power to enforce the provisions of this amendment with appropriate legislation.

This provision emphasized the RIGHT and responsibility of the Congress to pass whatever laws might be necessary to see that the provisions of this amendment were enforced.

Because the Fourteenth Amendment was poorly written, it has required more legislation and judicial proceedings than any other provision in the Constitution.

PROVISION

264

From the Fifteenth Amendment

The right of citizens of the United States to vote shall not be denied or abridged by the United States or any individual state on account of race, color, or previous condition of servitude.

This provision gave every qualified voter the RIGHT to vote and made it unlawful to exclude any such person because of race, color, or previous condition of servitude.

It is rather amazing that a provision of this kind should have been required in the Constitution of the United States. Nevertheless, there was wide discrimination among the states against various classes of voters because of race, religion, foreign extraction, or economic status. Even the Supreme Court had declared that it was within the power of a state to exclude citizens of the United States from voting for those reasons, just as it could on the basis of age, property, or educational requirements.[1]

Even after this provision, there were various devices employed to discriminate against qualified voters for over another century.

The Nature of Slavery

Now that we have covered the three amendments to the Constitution dealing with the issue of slavery, perhaps it is appropriate to provide a deeper insight into the nature of slavery and the real history of this affliction in the United States. Many myths and misunderstandings have developed over the years which deserve clarification.

First of all, let us speak briefly of "slavery" as an institution. It is closely identified with an important aspect of human nature. The Founders recognized that human nature is a combination of sunshine and shadow. On the sunshine side we find the perfectability of human reason and the high aspiration of the human spirit that make civilization possible. On the dark side we find the imperfectability of human emotion which gives vent to ugly manifestations of passion and greed.

One of these tendencies which emerges from the shadow of man's darker side is the inclination to live by the sweat of other men's brows. There are all kinds of ways for a man to get other men into a state of bondage or "involuntary servitude." The milder forms include high, confiscatory interest rates, or getting a sharecropper to work for 10 percent of the harvest, or paying a miserly wage for a day of hard labor.

The most degraded bondage is outright slavery, where one human being pretends to own another, "body and soul."

In the history of the world, nearly every nation has had slaves. The Chinese kept thousands of slaves. Babylon boasted of slaves from a dozen different countries. The dark-skinned Hittites, Phoenicians, and Egyptians had white slaves. The Moors had black slaves. America had black slaves. The Nazis had white slaves. The Soviets still do, with several million white slaves wearing out their starved, near-naked bodies in slave labor camps.

So the emancipation of human beings from slavery is an ongoing struggle. Slavery is not a racial problem. It is a human problem.

Why Emancipation Was Delayed

In 1776, Thomas Jefferson compiled a formula which would have eliminated slavery in one generation (by 1800) and prevented the fratricidal destruction of the War Between the States. Furthermore, by 1776 it had been proven statistically that slavery was not economically sound. Slaves, who had to be fed, clothed, housed, and cared for in sickness or health like any other "property," often consumed 90 percent or more of what they produced. Throughout the South there was a growing sentiment, especially among the leaders in Virginia, that slavery should be abolished.

Then something happened.

In 1793, Eli Whitney invented the cotton gin, which made it possible to mechanically separate short-staple cotton from the seeds so it no longer had to be tediously done by hand. The whole industry changed almost overnight. The South began to produce bales of cotton in quantities never believed possible. The price dropped from a high of a dollar a pound to just a few cents. Suddenly, king cotton was back on the throne. And so was slavery.

The following article by the late Professor Fred Albert Shannon tells the story of slavery in America.

The Story of Slavery

"Some attention should be paid to the movement which after 1776 gradually limited slavery to the South. 'Inherent liberty' was more than a cant expression in revolutionary days, and Jefferson's statement about all men being created equal was taken by himself and many others to include the black race. Patrick Henry and Edmund Randolph, like Jefferson, were among those who were touchy in their sentiments about their ownership of slaves.

"Negro service in the Continental army was encouraged in some places and permitted elsewhere. An unsuccessful effort was made by Congress to provide for the enlistment of 3,000 Southern slaves on the basis of compensated emancipation. As a part of the same movement, Vermont, in its Constitution of 1777, prohibited slavery — there were probably not a dozen slaves in the state anyway — while Virginia in 1776, and Massachusetts and New Hampshire in 1780, put inherent-liberty clauses into their bills of rights.

"But it was easier to make these declarations effective in New England than in the Old Dominion of Virginia where so many social problems were raised by the question of freeing a large black population. Consequently, the Virginia clause remained merely a piece of rhetoric while Massachusetts and New Hampshire within a few years were rid of slavery.

Gradual Emancipation in the North

"Pennsylvania in 1780, Rhode Island and Connecticut in 1784, New York in 1799, and New Jersey in 1804 adopted gradual-emancipation laws. Persons already slaves should remain so at the will of their owners, but all children born in the future should be free upon reaching a designated age, ranging from 18 to 28 years. It was also sometimes provided that aged slaves should not be freed by persons wishing to avoid their support, and there was additional restraint upon selling slaves South to circumvent the emancipation laws. New York in 1817 provided for the termination of all slavery

at the end of 10 years. The system probably lingered longest in New Jersey, though after 1846 the remnant of slaves were usually designated as apprentices. The institution in the North died of inanition, the laws being largely in the way of obsequies.

More Slaves Liberated in the South

"Far more slaves were freed in the South than ever were in the North, but this was by private manumission instead of legislation. Only in Delaware and Maryland was there an actual decline in the number of slaves from 1790 to 1860. These two states, together with Virginia, had two-thirds of the free Negroes of the South in 1860 while the slave states as a group contained 53 percent of the 448,000 [freed Negroes] of the whole country. These figures, however, understate the case, for many Negroes freed in the South were sent out of the states and colonized in the North. Otherwise the preponderance of Southern residence among free Negroes would have been still greater.

Abolitionists Delay Emancipation Process

"Gradual emancipation by legislative action was talked about in the South for two generations after the Declaration of Independence. A fierce contest, waged over this issue in the legislature of Virginia as late as 1832, was lost by the emancipationists largely because of resentment against the interference of Northern abolitionists and terror over the Nat Turner insurrection of the preceding year.

"Had the result been different the effect upon the border states, where slavery at best was of questionable value, may well be imagined. By too militant action the abolitionists themselves did much to perpetuate slavery in the northern group of the Southern states. So far as the lower South is concerned, the continuation of slavery was based not only on a fear of the social consequences of emancipation, but even more on the fact that cotton growing revived the economic value of what for a time had been an institution of doubtful worth.

"Until after 1800 the South was quiescent or even favorable to the movement to limit slavery. The only congressional vote against the antislavery clause in the [Northwest] Ordinance of 1787 was cast by a delegate from New York. The south was not interested in the occupation of the Old Northwest and did not consider the Ordinance as a precedent. State rivalry rather than the question of slavery *per se* was responsible for the contest in the Federal Convention over the counting of slaves for the purposes of representation and direct taxation. The inclusion of a fugitive-slave provision in the Constitution and the Act of 1793 virtually ended the slavery question in federal politics for many years. Even the permissive clause of the Constitution for the abolition of the importation of slaves after 1807 did not provoke sectional hostility. At the time of its adoption the traffic was legal only in Georgia and a few Northern states, and Georgia abolished it in 1798. At that time the South had several reasons for wishing to see the trade stopped—an excess of Negro population, depreciation in the value of slaves already possessed, and possible overproduction of crops accompanied by ruinous prices being especially feared.

Federal Government Outlaws Importation of Slaves in 1808

"As 1808 approached, the rapid extension of cotton growing tended to make the South more dubious about the wis-

dom of total exclusion. South Carolina, having abandoned her restrictions, imported 39,000 Negroes in the last five years before the federal law took effect. The Act of 1807 provided for the confiscation of slaves illegally imported, but the individual states were permitted to dispose of them, the result being that they were often sold at auction. The extent of violation of the law is uncertain, but even if the most exaggerated figures are accepted only a tenth of the increase of Negro population in the next 50 years can be accounted for, thus attesting a fair degree of enforcement. If the trade had not been interfered with it is likely that the markets would have been glutted to such an extent in prosperous times that in succeeding depressions slaves would be nearly valueless. In such a case, owners might have been tempted to free them to escape the responsibility for their support. But, on the other hand, this would merely have aggravated the race problem and might have resulted in a still worse labor system, that of serfdom.

Shortage of Labor

"An immediate result of the stoppage of the foreign slave trade was a continuous increase in the price of slaves in America. This resulted in a greater degree of interest in the welfare of such property, but at the same time it lessened the chances of emancipation even by private manumission. The act also greatly stimulated the interstate trade. The natural increase in Negro population was hardly enough to meet the labor needs even of the older states of the lower South, while the demand in the rapidly growing southwest was insatiable. On the other hand, Maryland, Virginia, Kentucky, and Missouri grew more slaves than they could use. Without the market which the nonimportation measure created in the Gulf states, the burden of the slave system would surely have become unbearable to the borderland owners.

Rise of the Professional Slave Traders

"About half of the migration of slaves within the country can be accounted for by the movement of the masters to the more desirable Western lands. Some exceptional servants were sent out to find their own purchasers, while others were put up at lottery. Gradually a class of professional slave traders grew up, to whom the masters were inclined to trust only the less desirable of their chattels. The undue proportion of shiftless and criminally inclined slaves in the traders' retinues did much to bring out the worst characteristics of the drivers. Partly for this reason, no doubt, the slave dealers were held in low social esteem, though they often had silent partners among the most respectable of business and professional men. Their ostracism as well as the risks of the business kept the number of traders relatively small, thus adding more to the profits of those who knew how to make a success of the business. Good field hands or mechanics and, among the women, those skilled in the household arts or attractive enough to make personal servants brought the best prices, especially if between 10 and 30 years of age.

Families Usually Sold As a Unit

"The tendency was to sell families as units, if for no other reason [than] to keep the slaves contented. The gangs in transit were usually a cheerful lot, though the presence of a number of the more vicious type sometimes made it necessary for them all to go in chains. At the other extreme, when the Central of Georgia railroad company in 1858 equipped

a Negro sleeping car to assist in the slave trade it set a standard not always maintained in a later generation. When on the block, the slave was as likely to hinder as to help in his sale. Some, out of a vain conceit in bringing a high price, would boast of their physical prowess, in which case an unwary purchaser was likely to be cheated. Others would malinger, because of a grudge against owners or traders or in order to bring a low price and be put at less tiring labor. Dealers, also, adopted the tricks of horse traders to make their merchants more attractive — the greasiest Negro was generally considered the healthiest.

"The selling of slaves was not all profit to the border states. Unmarketable Negroes increased in proportion as the better ones were sacrificed to hard times, thus accentuating the race problem. Periods of depression caused excessive sales, after which there would be too few laborers to restore profits in better times. As to the slave himself, since his status was permanently fixed anyway, removal to a locality where his work was more profitable merely added to the esteem in which he was held, and, consequently, to his physical welfare.

Problems of Supervision

"In the management of slave labor the gang system predominated. The great majority of owners, having at the most only one or two families of Negroes, had to work alongside their slaves and set the pace for them. Slavery did not make white labor unrespectable, but merely inefficient. The slave had a deliberateness of motion which no amount of supervision could quicken. If the owner got ahead of the gang they all would shirk behind his back. The possessor of a dozen or more field hands could give all his energy to superintendence, while the wealthier planters had hired foremen for each gang of about twenty. The rare individual who had several estates and a steward to look after the labor could devote his whole time to management, literary pursuits, politics, or, till ruin overcame him, to idleness. Along the rice coast the task system prevailed. Each slave was allotted five acres, his daily task being fixed by custom. When the stint was properly completed he had the remainder of the day, if any, for rest or recreation. It was useless to try to vary the tradition by larger tasks. Even the overseers, who had to stay at the job till the last worker finished, had an interest in the *status quo.*

Plantation Standard of Living

"Though plantations were as nearly self-supporting as staple production would permit, the South was increasingly dependent upon outside sources for food and manufactures. It required painstaking management to support the costly labor system and make profits without exhausting the soil. A careful rotation of crops helped in many instances, but the practice was far from being universal. Samuel Hairston, one of the most successful of tobacco planters, so managed his numerous estates in the piedmont of Virginia and North Carolina that in 1854 all of his 1,600 slaves were fed and clothed with products of the plantations. An output of 6½ tons of pork was the record of a Georgia plantation in an earlier year. It was no unusual thing for the labor force to be divided into specialized groups of field hands, craftsmen, household manufacturers, and domestic servants. Many slaves were accomplished carpenters, blacksmiths, or even iron founders. Slave food, even if monotonous, was plentiful. Corn bread and bacon were the mainstays, with plenty of fruit and vegetables in season. In hog-

killing time, countenances were unusually greasy. Clothing also was on the par with that of the poorer white people and no less adequate in proportion to the climate than that of Northern laborers. If [negro children] ran naked it was generally from choice, and when the white boys had to put on shoes and go away to school they were likely to envy the freedom of their colored playmates. The color line began to appear at about that time.

Treatment of Slaves

"The instructions of planters to overseers almost universally emphasized the care to be given to slaves, firmness without brutality, and justice unaccompanied by indulgence being emphasized. Increased production should not be at the expense of sullen and rebellious slaves. Cleanliness was insisted upon even to the point of the forcible scrubbing of a Negro with too much local atmosphere. Whiskey was administered only at occasional celebrations or in sickness, malingering being carefully guarded against. Many slaves were allowed to sell produce from their own truck patches. Where this practice led to pilfering from the masters' stores, small gifts of money were substituted. Pregnant and nursing mothers were given special attention, with just enough work to benefit them. In addition to humane impulses, the need of guarding the health of the mother was enough to enforce this precaution even when there was no economic urge to increase slave numbers.

What About Selective Breeding of Slaves?

"The stories of systematic breeding of slaves must be largely discounted. Growth in population was almost universally left to unregulated nature. Enormous slave families are sometimes mentioned, such as that of the pregnant woman 41 years of age who, including numerous twins, already had 41 children. Such multiplication would certainly have been discouraged by a master trying to breed a superior stock of slaves. Moderate sized families were the rule, but parents had no worries about the care of numerous children — the expense belonged to the owners. It was the death rate which required the greatest precautions. As a guard against epidemics of cholera and smallpox — yellow fever being more the white people's scourge — costly medical attention was looked upon as a matter of economy. Some sugar planters employed squads of Irishmen or other immigrants for ditching and like work involving danger to health or life. An incapacitated alien cost no capital outlay. In famine times the owners could, as they did in Alabama in 1828 and 1855, borrow money with the slaves as security to provide food for them — a form of social insurance not available to the free laborer.

How About Cruel and Compulsory Labor?

"Excessive toil occurred only where the masters or overseers were feeble witted as well as brutal. A persistent rumor among abolitionists was that sugar planters followed a policy of working slaves to death in seven years as a matter of economy. The persons spreading such reports were as ignorant of Negro nature as they were of conditions in the sugar mills. Furthermore, they overrated the ability of the masters to know how to kill a slave in the given time instead of leaving him a broken-down burden to the plantation. When they set out to prove the accusation they returned with no evidence, but convinced that the practice existed in some obscure region which they had not

succeeded in ferreting out. Harriet Martineau, after watching slaves go through the motions of work without tiring themselves, considered the planters as models of patience and observed that new slave owners from Europe or the North were prone to be the most severe. Numerous observers, of various shades of opinion on slavery, agreed that brutality was no more common in the black belt than among free labor elsewhere, and that the slave owners were the worst victims of the system.

Exceptions to Generalizations

"Exceptions might be mentioned to all these generalizations. Not all overseers obeyed implicitly their benevolent instructions, but the worst conditions were found on the plantations of absentee owners, some of whom lived in the North. In 1830, when there were 2,000,000 slaves in the country, the census showed that less than 2.5 percent of them lived on 2,683 plantations or estates under absentee ownership. The numbers in the various states ranged from seven in New Jersey to 19,590 in South Carolina. To avoid exploitation by overseers, most of the masters in the nineteenth century paid them stated salaries instead of a portion of the crops, the sums ranging from $600 to $1,000 a year. At least as numerous as the cases of barbarity are the instances of extreme indulgence. Jefferson Davis practiced profit sharing with his Negroes, and even allowed them to sit in judgment upon members of their own race. About the only interference with the decrees of the sable courts was to ameliorate extreme sentences. This practice was continued until the Union soldiers broke up the order of his Mississippi plantation in 1862.

What About Mixing of the Races?

"As to the intimacy of relations between the owners and their chattels, not only did Negro 'mammies' suckle the children of their masters, but it was no disgrace for the [white] mistress to act as wet nurse for a suddenly orphaned [negro child]. Negro concubinage has been noted at all periods, both in slavery and freedom. Mulattoes were not usually the result of intermarriage of the races. Outdoor sports and amusements were often indulged in by mixed racial groups. Negro weddings were attended by white people who joined in the celebration. If the marriages were of a rather impermanent nature, that fact was frequently considered as 'one of the blessings of slavery.' At church and camp meetings the Negroes, in their own section of the building or tabernacle, enjoyed the experiences immensely. They could shout without restraint, while the masters, in order to preserve their dignity, had to repress their emotions. It made little difference if religion was thrown off soon after the camp meeting dissolved — backsliding was pleasant, and there was always a chance to get intoxicatingly converted again.

Rebels and Runaways

"The worst offenses of slaves against the white men's code were rebellion and running away. Drunkenness, stealing, hiding out from work, personal filthiness, carelessness of property, fighting, and general brutality had various positions in the scale of misdemeanors. Negro preachers often bred discontent by their unnecessary restraint upon pleasure, and, if itinerants, had to be watched closely for abolitionist or seditious doctrines. Running away was an especially heinous offense, not only because

of the loss of the slave but even more on account of the moral effect upon others. Habitual runaways, therefore, were severely whipped, sold, or sometimes more barbarously treated. Whipping, even for this offense, was usually limited by law to 100 lashes, which surely was a sufficient number.

The Fear of Race Wars

"The constant fear of slave rebellion made life in the South a nightmare, especially in regions where conspiracies were of frequent occurrence. The extermination of white civilization in Santo Domingo was followed in the nineteenth century by several other bloody outbursts in the West Indies, which never failed to cause ominous forebodings in America. In Colonial days there had been several uprisings where white people lost their lives. An especially ferocious penalty was inflicted in New York in 1712 when a culprit was roasted in a slow fire for eight or ten hours before he lost consciousness. In 1720 there were some hangings and burnings in South Carolina in consequence of a conspiracy, and in 1739 another revolt in the same colony cost the lives of 21 whites and 44 Negroes. Gabriel's insurrection near Richmond in 1800 led to the execution of 24 blacks and the deportation of 10 more.

"In the nineteenth century, conspiracies headed by George Boxley and Denmark Vessey in South Carolina (1816 and 1822), and the Nat Turner insurrection in Virginia in 1831 were the outstanding examples. Boxley, a Negro with a sort of John Brown intelligence, escaped while six of his followers were executed. The Vessey plot, prematurely revealed, resulted in 130 arrests which culminated in the hangings of 35, deportation of nearly as many, and imprisonment of 4 white participants. Nat Turner, a mystic type of Baptist preacher, set out to annihilate white civilization, and succeeded to the extent of 10 men, 14 women, and 31 children. He was finally hanged with several of his followers, but the after-effects of the uprising were deplorable.

Abolitionists Blamed for Insurrections

"The abolitionists, whether rightly or wrongly, were blamed for the outrage, and thereafter it was hard to convince Southerners that even the most harmless of abolitionists were not in sympathy with such tactics. William Lloyd Garrison's declarations in the *Liberator* that, 'whenever commenced, I cannot but wish success to all slave insurrections,' and 'Rather than see men wearing their chains in a cowardly and servile spirit, I would, as an advocate of peace, much rather see them breaking the heads of the tyrant with their chains,' were cited in justification of this exaggerated notion. The black codes were usually strengthened and more rigidly enforced after a slave outbreak or plot than at other times. But it would not be fair to judge the enforcement of the laws by their statute provisions. The codes were made severe enough to meet the worst conceivable emergencies, but these seldom arose. In practice, most of the masters handled their own difficulties in patriarchal fashion.

Status of Free Negroes

"The free Negro had rather more opportunity for economic advancement in the South than in the North. The Southerner was bothered by the race problem but knew how to handle the individual Negro, while the Northerner professed a benign interest in the race so long as its members were as remote as possible. Neither section was willing to grant equal

rights in education, suffrage, or legal standing, while many states of all sections had laws prohibiting the immigration of free Negroes. Abraham Lincoln could not have maintained his standing in the Republican party had he not been a staunch supporter of the Illinois exclusion law and a firm opponent of political and social equality. It was most difficult for a Negro to get a job in the North, except at the most loathsome of tasks. Some Negroes, having been freed and sent to any Northern state which would receive them, became so miserable as to solicit a return to slavery.

"Except in a few large places such as New Orleans and Charleston, there was no great amount of white labor for hire in the South, and, therefore, no such prejudices existed against the employment of free Negroes. Though the white mechanics of the towns resented competition with Negro labor whether slave or free, such feeling was not widespread, for the great bulk of the blacks as well as of the nonslaveholding whites lived in the country, worked on their own land, and had more important things to worry about than race rivalry.

Thousands of Free Negroes Owned Slaves

"Many of the Negroes, especially in Louisiana, Virginia, South Carolina, and Maryland, were well-to-do or rich, some had plantations, and thousands of them were owners of slaves.... Other accounts tell of a South Carolina Negro in 1790 who owned 200 slaves and had a white wife and son-in-law. Near the end of the slave era Cyprien Richard, a Louisiana Negro, bought a plantation and 91 slaves for about a quarter of a million dollars. Thomas Lafon, a colored merchant of New Orleans, died after the Civil War leaving an estate of about $500,000 when few people in the South were really rich. In Louisiana, especially, most of the wealthier colored people were mulattoes who had been given an economic start by their white fathers, not all of whom enslaved their children.

Private Emancipation

"Private manumission continued with abated frequency even after the rise of Northern abolition societies. John Randolph, just two years after the Nat Turner insurrection, willed freedom to all of his nearly 400 slaves, but, like Washington and Jefferson, he had no children of record to leave them to. Sometimes the freedmen relapsed into slavery either because of their own wish, by kidnapping, or as a punishment for crimes. One free Negro who was contemplating giving freedom to his slave wife changed his mind and sold her to another master to pay some court costs she piled upon him in an attempt to elope with another slave. Free males often married slave women, thereby escaping the responsibility of caring for their children. The surplus of free women frequently became prostitutes or concubines of white men. Neither the state of Liberia nor the offer of free land in Haiti tempted many of the freedmen to leave America. Negro lodges, stressing burial ceremonies, got a big start in this period, for, as historian Ulrich B. Phillips says [in his book *American Negro Slavery*, p. 452], 'A negro burial was as sociable as an Irish wake.'

Economics of Slavery

"The economic value of slavery was often in dispute, especially in periods of depression, but it was not till after 1830 that a militant defense of the system became popular. Thomas R. Dew, a professor and later president of William and Mary College, was largely influential

through his statistics and reasoning in preventing an emancipation program by the Virginia legislature in 1832. He argued that slavery was profitable and a blessing to both races. The problems created by blacks and whites living in proximity to each other could be solved in no other way. From this time on, the Jeffersonian principles on the subject were rejected as fallacious by the mass of Southern people. In 1852 Dew's *Essay* was reprinted along with other writings, including those of William Harper and James H. Hammond, under the title of *The Pro Slavery Argument*. Among the fieriest of crusaders was George Fitzhugh, who in his *Cannibals All* and *Sociology for the South* went a little beyond the logical extreme of militant language. Much more reasonable in its approach was Edmund Ruffin's *Political Economy of Slavery* (Richmond, 1857), the last important contribution on the subject....

The Cost of a Slave

"The cost of a slave included amortization of capital, insurance against death, sickness, escape, old age and disability, taxes, supervision, food, clothing, housing, and incidental items. In an era when free laborers could exist only by the wages of the whole family, it is difficult to see how a slaveowner could profit by supplying all the essential physical wants of his force and at the same time carry the risk of so much capital tied up in them.

"The initial cost of prime field hands increased from $500-900 in 1810 to $1,200-1,800, and sometimes even $2,000, in 1860. There was no corresponding growth in the price of staples for the same period, though there was some development toward more efficient management. If a planter in 1860 could have sold a slave for $1,500, invested the money at 5 percent, and used the interest to pay the wages of an equally competent free man, that laborer would have got as much in proportion to his efficiency as a farm employee in the North, while the employer would have been saved the additional expense of slavery. But this was an impossibility for most owners, and, anyway, would not reduce slavery. Fully compensated emancipation was out of the question.

A Little More Time May Have Solved the Problem

"This seemingly hopeless situation was by 1860 approaching a solution which was not allowed to materialize. The limits of slavery expansion either by purchase or conquest had been reached. The natural increase of slave population in a few decades would have checked the opportunities for profitable sale. It seems futile to believe otherwise than that, before the end of the century, the diminishing returns from slave ownership would have driven slave prices so low that, in self-defense, owners would have made tenants of their laborers, thrown them upon their own resources, and placed dependence upon rentals for profits. It likewise seems reasonable to believe that by this solution the Negro might have escaped the revulsion of feeling against him that resulted from forcible emancipation and the carpetbag regime."[2]

In some ways, the economic system of slavery chained the slave owners almost as much as the slaves.

PROVISION

265

From the Sixteenth Amendment

The Congress shall have power to lay and collect taxes on income from any source whatever, and such taxes shall no longer be required to be apportioned among the several states according to population.

This provision gave the United States government the RIGHT to collect taxes on income in spite of Article I, section 2, clause 3.

Many believe this form of direct taxation has created a deeper crisis in the American culture than any other form of taxes yet devised.

The History of the Sixteenth Amendment

The Founding Fathers had rejected income taxes and any other direct taxes unless they were apportioned to each state according to population. Nevertheless, a direct tax on incomes was levied during the Civil War and upheld by the Supreme Court on somewhat tenuous grounds. When another income tax law was enacted in 1893, the Supreme Court found it unconstitutional. After reviewing the two Pollock cases in 1895, the court declared that the act violated Article I, section 9 of the Constitution. Therefore, the collection of income taxes had to be suspended.

During the following decade, however, the complexion of the court changed somewhat and so did public sentiment. There was great social unrest and the idea of a tax to "soak the rich" began to take root among liberals in both major parties. Several times the Democrats introduced bills to provide a tax on higher incomes, but each time the conservative branch of the Republican party killed it in the Senate. The Democrats used this as evidence that the Republicans were the "party of the rich" and should be thrown out of power. This forced President Taft to acknowledge in political speeches that income taxes might be all right "in principle," but it was well known among his close associates that he was strongly opposed to such a tax.

Finally, in April 1909, Senator Joseph W. Bailey, a conservative southern Democrat who was also opposed to income taxes, decided to further embarrass the Republicans by forcing them to openly oppose an income tax bill similar to those which had been introduced in the past. He therefore introduced his bill expecting it to get the usual opposition. However, to his amazement, Teddy Roosevelt and a growing element of liberals in the Republican party came out in favor of the bill, and it looked as though it was going to pass.

Not only was Bailey surprised, but Senator Nelson W. Aldrich of Rhode Island, the Republican floor leader, frantically met with Senator Henry Cabot Lodge of Massachusetts and President Taft to work out a strategy to demolish the Bailey tax bill. Their own party was split too widely to permit a direct confrontation, and so the strategy was to make a political end run. They decided to announce that they were in favor of an income tax but

only if it were an *amendment* to the Constitution. Within their own circle they admitted that it might get the approval of the House and the Senate, but they were quite certain that it could be defeated in the more conservative states—three-fourths of which were required in order to ratify the amendment.

Thus, the Democrats were caught off guard when President Taft unexpectedly sent a message to Congress on June 16, 1909, recommending the passage of a constitutional amendment to legalize federal income tax legislation.

This strategy threw the liberals into an uproar. Right at the moment when their Bailey bill was about to pass, the Republicans were coming out for an amendment to the Constitution which would probably be defeated by the states.

Congressman Cordell Hull (later Secretary of State under Franklin D. Roosevelt) saw exactly what was happening. He took to the floor to excoriate the Republican leaders, saying:

"No person at all familiar with the present trend of national legislation will seriously insist that these same Republican leaders are over-anxious to see the country adopt an income tax.... What powerful influence, what new light and deep-seated motive suddenly moves these political veterans to 'about face' and to pretend to warmly embrace this doctrine which they have heretofore uniformly denounced?"[3]

He then went on to expose what he considered to be a political trick. However, he needn't have been so concerned. The slogan of "soak the rich" automatically aroused Pavlovian salivation among politicians both in Washington and the states. The Senate approved the Sixteenth Amendment with an astonishing unanimity of 77 to 0! The House approved it by a vote of 318 to 14.

When Congressman S.E. Payne of New York, who had introduced the amendment in the House, saw that this end run was turning into a winning touchdown for the opposition, he was horrified. He went to the floor and openly denounced the bill he had sponsored. Said he:

"As to the general policy of an income tax, I am utterly opposed to it. I believed with Gladstone that it tends to make a nation of liars. I believe it is the most easily concealed of any tax that can be laid, the most difficult of enforcement, and the hardest to collect; that it is, in a word, a tax upon the income of the honest men and an exemption to a greater or less extent, of the income of rascals; and so I am opposed to any income tax whatever in time of peace.... I hope that if the Constitution is amended in this way the time will not come when the American people will ever want to enact an income tax except in time of war."[4]

The end run of the Republican leadership did indeed backfire. State after state ratified this "soak the rich" amendment, until it went into full force and effect on February 12, 1913.

Did It Soak the Rich?

Certain writers such as Kelly and Harbison (authors of *The American Constitution*) rejoiced that this amendment "shifted the growing burden of federal finance to the wealthy."[5] Nothing could be further from the truth.

The wealthy, especially the super-wealthy, had anticipated this very development and had created a clever device to protect their wealth. It was called a "charitable foundation." The idea was to con-

sign the ownership of wealth, including stocks and securities, to a foundation and then get the Congress and the state legislatures to declare all such charitable institutions exempt from taxes. By setting up boards which were under the control of these wealthy benefactors, they could escape the tax and still maintain control over the disposition of their fabulous fortunes. Long before the federal income tax was in place, multi-millionaires such as John D. Rockefeller, J.P. Morgan, and Andrew Carnegie had their foundations set up and operating. The next step was to make certain that the new tax bill passed by Congress contained a provision specifically exempting their treasure houses from taxation.

The tax bill which the Sixteenth Amendment authorized was introduced as House Resolution 3321 on October 3, 1913. It turned out to be somewhat of a legislative potpourri for tax attorneys, accountants, and the federal courts. In the ensuing years, millions upon millions of dollars would be spent trying to figure out exactly what this tax law and dozens which followed after it intended to provide.

Nevertheless, tucked away in the inward parts of the original bill was that precious key which safely locked up the riches of the super wealthy. Here are the magic words under paragraph G of section II:

"Provided, however, that nothing in this section shall apply . . . to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes." All of the foundations of the super-rich were designed to qualify under one or more of these categories.

How the Cute Little Monkey Grew into a Gorilla

When the first income tax was sent out to the people, the Congress chortled confidently that "all good citizens will willingly and cheerfully support and sustain this, the fairest and cheapest of all taxes." That was the cute little monkey part. After all, the first tax ranged from merely 1 percent on the first $20,000 of taxable income to only 7 percent on incomes above $500,000. Who could complain?

At first scarcely anyone did. Little did they know that before the tinkering was done in Washington, this system would be described by many Americans as the most unfair and expensive tax in the history of the nation. Within a few years it had become the principal source of income for the federal government.

In the beginning, hardly anyone had to file a tax return because the tax did not apply to the vast majority of America's workaday citizens. For example, in 1939, twenty-six years after the Sixteenth Amendment was adopted, only 5 percent of the population, counting both taxpayers and their dependents, was required to file returns. Today, more than 80 percent of the population is under the income tax system.

Withholding Taxes

The collection process was greatly facilitated in 1943 by a device used by President Roosevelt to pay for the costs of World War II. It was called "withholding from wages and salaries." In other words, the tax was collected at the payroll window before it was even due to be paid by the taxpayer. Economists point out that this device, more than any other single factor, shifted the tax from its original design as a tax on the wealthy to a tax on

the masses — mostly the middle class. Investigations have disclosed that the truly wealthy pay relatively little or no income tax at all.

Some idea of how the little monkey grew into a gorilla is perceived from the fact that nearly half of all federal revenue is now raised by income taxes. Furthermore, the higher brackets are literally confiscatory — but by "due process" under the Sixteenth Amendment. Rates have been as high as 94 percent in the upper brackets during wartime, and even in peacetime they are presently 50 percent of taxable income. Medium income people up through the upper middle class pay between 12 and 35 percent. Nevertheless, at all levels it has become sufficiently burdensome to discourage the attainment of basic economic advantages which most Americans are seeking.

Weaknesses of the System

The most damaging aspect of the Sixteenth Amendment is the fact that it vitiates the unalienable rights provided in the Fourth Amendment. This is the amendment which protects privacy — the privacy of the home, business, personal papers, and personal affairs of the private citizen. None of these elements of privacy is disturbed by a poll (head) tax because it is so much per person regardless of circumstances, but when the tax is based on income, the Internal Revenue Service is assigned the most unpleasant task of making certain that everyone pays his fair share. This is a physically impossible task without prying into the private papers, private business, and personal affairs of individual citizens. By any standards it is a miserable assignment. Furthermore, it is impossible to run audits and surveys of all taxpayers, so the audits seldom check more than 2 percent of them.

There are many things wrong with this approach. Worst of all, it puts the government tax collectors in an aggressive role which intimidates citizens who are unlucky enough to be audited, giving them the feeling that they are the "victims" of an unfair system.

The IRS also finds it difficult to avoid the attitude that each taxpayer is a cheater, even a criminal, who must somehow be cornered and caught. This has brought the structure of the entire income tax collection process into question.

For example, there is a well-known underground economy of monetary transactions which is conducted without any records. It is estimated that the losses in federal revenues from this "underground economy" are at least $100 billion per year. Obviously this is not fair to those who are paying their share. Then there is an estimated $65 billion per year which is earned income but not reported. This is considered unfair. There is a lot of padding of expense accounts, which is estimated to reduce the tax total by another $18 billion. Other operations, both legal and illegal, jump the total up a few more billion.

There has also been extensive criticism of the prosecution of tax cases. The appeal is through a system of tax courts which are without juries. In order to get a tax case into a regular court where there is a jury, the citizen must pay the tax and then sue the government.

Thousands of complaints have also poured into the IRS concerning the tactics used by some of its agents. Citizens feel they are treated as criminals rather than suspects who are innocent until proven guilty.

The Statement of a Former Commissioner of the IRS

T. Coleman Andrews served as Commissioner of the Internal Revenue Service for nearly three years in the early fifties. Finally he resigned and made the following statement:

"Congress [in implementing the Sixteenth Amendment] went beyond merely enacting an income tax law and repealed Article IV of the Bill of Rights, by empowering the tax collector to do the very things from which that Article says we were to be secure. It opened up our homes, our papers and our effects to the prying eyes of government agents and set the stage for searches of our books and vaults and for inquiries into our private affairs whenever the tax men might decide, even though there might not be any justification beyond mere cynical suspicion.

"The income tax is bad because it has robbed you and me of the guarantee of privacy and the respect for our property that were given to us in Article IV of the Bill of Rights. This invasion is absolute and complete as far as the amount of tax that can be assessed is concerned. Please remember that under the Sixteenth Amendment Congress can take 100 percent of our income anytime it wants to....

"The income tax is fulfilling the Marxist prophecy that the surest way to destroy a capitalist society is by 'steeply graduated' taxes on income and heavy levies upon the estates of people when they die.

"As matters now stand, if our children make the most of their capabilities and training they will have to give most of it to the tax collector and so become slaves of the government. People cannot pull themselves up by their own bootstraps anymore because the tax collector gets the boots and the straps as well.

"The income tax is bad because it is oppressive to all and discriminates particularly against those people who prove themselves most adept at keeping the wheels of business turning and creating maximum employment and a high standard of living for their fellow men.

"I believe that a better way to raise revenue not only can be found but *must* be found because I am convinced that the present system is leading us right back to the very tyranny from which those, who established this land of freedom, risked their lives, their fortunes and their sacred honor to forever free themselves."[9]

Seeking a Better Way

As we have pointed out earlier, the Founders were never in favor of a direct tax except in a dire emergency. Even then they warned that it should be assessed proportionately, according to the population of each state—not according to wealth. Having failed to heed their advice, modern Americans now find themselves saddled with a monstrous system which is proving impossible to manage either fairly or efficiently. Both the Congress and private foundations are searching for a better way.

Some have suggested the adoption of a flat tax by using the short income tax form, eliminating practically all deductions, and providing a ceiling of 20 percent as the top tax bracket. Others insist that the rights of the Fourth Amendment can never be fully restored until we abandon the income tax system, repeal the Sixteenth Amendment, and follow more traditional methods of raising revenue.

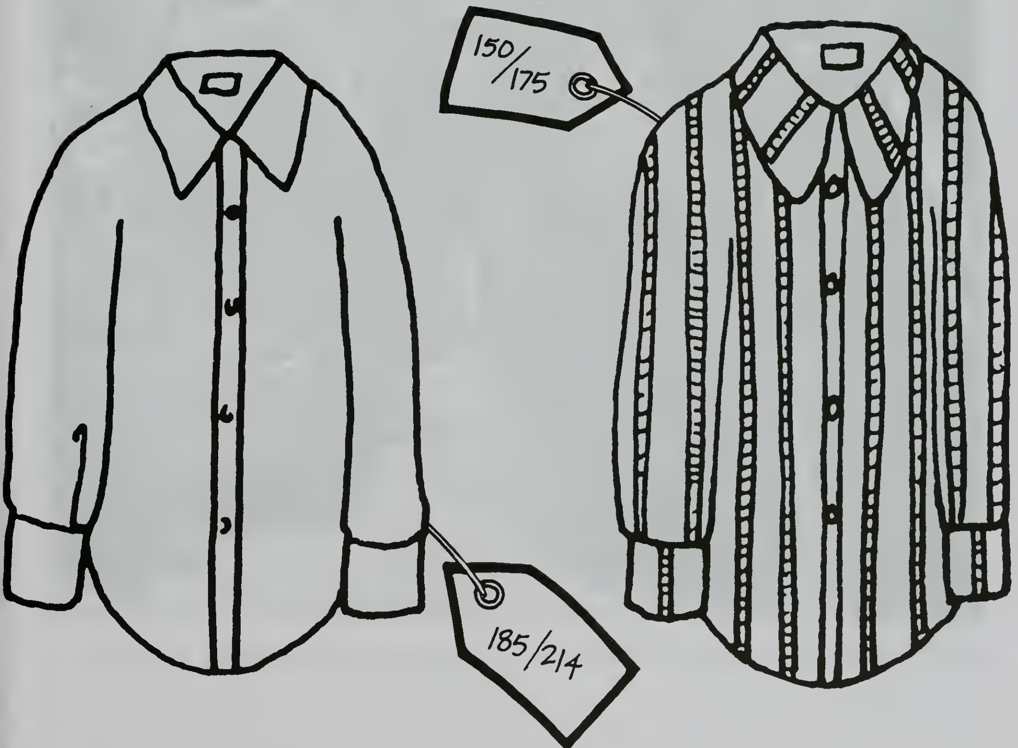
To restore the nation's fiscal sanity, it has been suggested that several things should be done simultaneously:

1. Pass the Balanced Budget Amendment, which would outlaw deficit spending in peacetime.
2. Pass a "Sunset Law," which would eliminate every government agency or federal expenditure which exists outside the Constitution and cannot survive an amendment to justify its continuance.
3. Pass a fiscal reform amendment which would henceforth raise required revenue indirectly by a consumer tax (federal sales tax), and simultaneously repeal the Sixteenth Amendment.

Should federal revenue be raised by a consumer tax, it has been recommended that all goods be required to show the tax separately, so that it does not become a "hidden" tax. A shirt, for example, would show the price as $12/15. This means the shirt is $12, the tax is $3, and the total price is $15. It has also been suggested that only a minimal tax be assigned to "necessities," such as food and utilities, so that the tax does not impose an excessive burden on people in the lower income brackets.

---

1. Norton, *The Constitution of the United States*, pp. 250-51.
2. Shannon, *Economic History of the People of the United States*, pp. 317-30.
3. U. S. Congress, House, *Congressional Record*, 12 July 1909, p. 4404.
4. Ibid., p. 4390.
5. Kelly and Harbison, *The American Constitution*, p. 626.
6. Quoted in the *Utah Independent*, 29 March 1973.



An effective consumer tax might show the original price of an item along with the price once the tax has been added.

CHAPTER

AMENDMENTS SEVENTEEN THROUGH TWENTY-SEVEN

This chapter covers the latest ten amendments, which were approved between 1913 and 1971. These include the popular election of Senators; the experiment with alcoholic prohibition; the women's suffrage amendment; the "lame duck" amendment; the repeal of the Eighteenth Amendment (Prohibition); the limitation of a President's term of office; the granting of electoral representation to the voters of the District of Columbia; the prohibition against laws rejecting qualified voters because they have not paid their taxes; provisions for the office and duties of the Presidency in the event of the death, removal, or disability of the President; and the amendment which grants eighteen-year-olds the right to vote.

There is an interesting story behind each of these amendments.

PROVISION

266

From the Seventeenth Amendment

The Senate of the United States shall be composed of two Senators from each state, elected to a six-year term by the people thereof; and each Senator shall have one vote.

This provision gave the people of each state the RIGHT to elect their United States Senators instead of having them appointed by their state legislatures.

The Founders had assigned the Senate the responsibility of representing the states as sovereign entities, which is why they were appointed by the state legislatures rather than being elected directly by the people of the state. This was so that Senators would not be compelled to involve themselves in the popular issues of the day but could concentrate primarily on the protection of states' rights and on maintaining the established order. Theirs was the primary assignment of balancing the budget, keeping taxes as low as possible, tempering the radicalism of the House, and serving as the "elder statesmen" of the Congress.

Despite the Founders' intentions, all of this was changed by the Seventeenth Amendment.

In effect, this made both the Senate and the House a reflection of the popular will without reference to the sovereign interests of the states, or the checks and balances which the states were to have provided through their Senators.

Even in the Constitutional Convention, however, there were those who felt that the Senate should be elected by a popular vote. Even the astute James Wilson of Pennsylvania held this view. In 1828 a Constitutional amendment was introduced to bring this about, but it was defeated.

A change began to come with the Civil War, when the idea of the states as sovereign political entities was seriously blunted and the centripetal forces of war induced the people to abandon their local loyalties and prerogatives in favor of the central government.

The Reconstruction days further eroded the concept of sovereignty in the states. Even more debilitating was the continuous series of scandals which involved state legislatures. Some had been discredited because of the oil, railroad, or banking interests which were so prominently represented in these bodies. Others had become dominated and corrupted by political machines. Democratic Senator Henry B. Payne and Republican Senator Joseph B. Foraker (both of Ohio) were found to be confederates of the Standard Oil Company. Others were found to be corporation lawyers representing railroads and banks. However, historians admit that "a majority of those in the Senatorial Old Guard were honorable and upright men of high personal integrity, but from the standpoint of agrarian radicals and progressives, they were too generally associated with large business enterprise, too conservative, and too far removed from popular Democratic influences."[1]

During the Reconstruction era, Presi-

dent Andrew Johnson, in a special message to Congress, recommended this same reform. However, the nation was still too close to the thinking of the framers of the Constitution, who had looked upon the Senate as a body representing the individual states.

It is interesting that the House passed this amendment in 1893, 1894, 1898, 1900, and 1902, but each time the Senate either ignored it or voted it down. Finally, the movement took hold in the states and several adopted the procedure of allowing the voters to indicate at the polls their preference for the office of United States Senator. In those states the legislatures would then automatically ratify the vote of the people.

This trend accelerated until, by 1912, twenty-nine states had senatorial primaries and were therefore choosing their Senators by direct election even though the actual appointment was made by the state legislatures in accordance with the voters' expressed will.

The final blow came in 1911 when the *Chicago Tribune* revealed that Senator William Lorimer (R–Ill.) had literally purchased his appointment by wholesale bribery of the state assembly. The Senate not only refused to seat Lorimer, but the incident broke down all remaining resistance to the passage of the Seventeenth Amendment.

It is interesting that the Senate resisted this revolutionary amendment right to the bitter end. It was only when nearly two-thirds of the state legislatures had voted for a constitutional convention to pass the amendment that the Senate realized the change would inevitably take place. It therefore capitulated and approved the amendment so that it could go to the states for ratification. The Seventeenth Amendment became part of the Constitution on April 8, 1913.

PROVISION
267
From the Seventeenth Amendment

When a Senate seat becomes vacant for any reason, the governor of that state shall issue writs of election to fill such vacancy; however, the legislature of any state may empower the governor to make a temporary appointment until the people fill the vacancy by an election as the legislature shall direct.

This provision gave each state the RIGHT to have any vacancy in the Senate filled by elections or by an appointment by the governor.

This provision was very similar to Article I, section 3, clause 2 of the Constitution, which provides: "If vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies."

Today, under strong party leadership,

this provision often operates as follows:

1. When a vacancy occurs, the governor resigns his post and is replaced by the lieutenant governor.

2. By prior agreement, the new governor appoints the ex-governor to the position of Senator to fill the unexpired term.

3. When the next election comes due, they each run as incumbents for their respective offices, and usually win.

PROVISION 268

From the Eighteenth Amendment

The manufacture, sale, or transportation of intoxicating liquors for beverage purposes is hereby prohibited. The Congress and the several states shall have concurrent jurisdiction to enforce this amendment, which must be ratified in seven years to be valid.

This provision gave the federal government and the states the RIGHT to enforce the prohibition of alcoholic liquors for beverage purposes.

This was also the first time an amendment had a time limit (seven years) for ratification—something which has now become the general practice.

Notice that this amendment did not give the federal government the authority to merely regulate the manufacture, transportation, and sale of alcoholic liquor, but made it an absolute prohibition. In that sense it was a statute rather than a principle of government like the rest of the Constitution. Note also that both the federal government and the states had concurrent responsibility to enforce this amendment.

The prohibition movement was mounting even before the Civil War, but by 1900, only five states had actually adopted statewide prohibition. Many states compromised by passing local option laws which allowed individual counties to decide whether or not the manufacture and sale of liquor would be permitted. Many women throughout the country rallied together and formed the Anti-Saloon League so that by 1916 a total of nineteen states were entirely dry, and a number of others were dry under local-option laws.

As early as 1913 the Webb-Kenyon Act forbade the interstate shipment of liquor to states that were legally dry. Also in 1913, a Constitutional amendment came up for a vote in the House, but it was defeated. In 1917 Congress adopted prohibition by statute (the Lever Act) as a wartime food-control measure. On December 18 of the same year, Congress voted to submit the Eighteenth Amendment to the states calling for the universal prohibition of the manufacture, sale, and transportation of liquor throughout the United States.

The spirit of reform and crusading engendered by the war psychology resulted

in speedy ratification by the states so that Prohibition became part of the constitution on January 29, 1919.

Resistance to the enforcement of the Eighteenth Amendment became apparent from the beginning. Many of the troops returning from Europe felt that this amendment had been put over on them during their absence. The fact that the law prohibited even the lighter alcoholic beverages such as beer and wine added to the unpopularity of the amendment.

A more extensive discussion of the enforcement problems connected with Prohibition will be covered when we come to the Twenty-first Amendment.

PROVISION 269

From the Nineteenth Amendment

The right of citizens of the United States to vote shall not be denied or abridged by the United States, or any individual state, on account of sex.

This amendment gave all women who are otherwise eligible the RIGHT to vote.

This is the amendment which finally provided for women's suffrage. The spirit of reform and a zeal for change smoothed the way. By 1919, women had gained an improved status in marriage and World War I had given them a more important status in business, industry, and community life.

Originally men had voted as the representative of their families and as the owners of property. It was also assumed that women had not been exposed to the education and experience necessary to deal with public issues.

Nevertheless, as early as 1878, Susan B. Anthony had induced a Senator from California to introduce a congressional resolution requesting an amendment for universal women's suffrage.

Wyoming had given voting rights to women as early as 1869, Colorado in 1893, Utah and Idaho in 1896, and Washington in 1910. It is interesting that since the Constitution does not limit congressional service to males, a woman was able to be elected to the House of Representatives from Montana in 1916—four years before the Nineteenth Amendment took effect. She was therefore elected without being able to vote for herself.

Theodore Roosevelt had advocated the passage of such an amendment when he ran for the Presidency in 1912, and Charles Evans Hughes had done the same while running for President in 1916. Although President Woodrow Wilson was personally opposed to the amendment, the pressure of circumstances finally induced him to go before Congress in September 1918 and ask for passage of a suffrage amendment.

Public reaction to this proposal was volatile on both sides. During the dramatic conflict, suffragettes picketed the White House, staged hunger strikes, and held massive parades and public meetings throughout the country. Congress finally passed the amendment on June 4, 1919,

and it went into effect August 26, 1920—one of the fastest ratifications in history. Only the Twenty-sixth Amendment was ratified more quickly.

Many reformers were confident that the entry of women into politics would help to clean up politics and stimulate the more apathetic segments of society. However, it was found that women had, for the most part, the same political virtues and failings as their menfolk. They were divided along much the same party lines and did not seem to alter the morality of politics one way or the other. This amendment doubled the number of people entitled to vote, but analysts have decided it has had little effect on the political process.

PROVISION 270

From the Twentieth Amendment

The terms of United States Senators and members of the House of Representatives shall terminate at noon on the third day of January of the year in which their terms were scheduled to expire. The terms of their successors shall then begin.

This provision, which gives newly elected Senators and Congressmen the RIGHT to assume their respective offices at noon on the third day of January following their election in November, eliminated what were known as "lame duck" sessions of Congress.

After the Constitution was ratified by the required number of states, the new government officially began operation on March 4, 1789. Therefore, the terms of Senators and Congressmen always began and ended on March 4 in odd-numbered years. Because Article I, section 4, clause 2 of the Constitution required sessions of Congress to begin on the first Monday in December each year, those who were defeated in the November elections (always in even-numbered years) were required to attend the next session until their terms expired the following March 4. Referred to as "lame ducks," they continued to represent people who had refused to elect them.

Those who had *won* the November elections were not entitled to take office until their predecessors' terms had expired. Therefore, since the next Congress would not assemble in regular session until the December following March 4, they were not able to take office for more than thirteen months after the election was held!

The Twentieth Amendment solved this serious problem by enabling newly elected Senators and Congressmen to take office on January 3, some two months after their election instead of the former thirteen months.

PROVISION

271

From the Twentieth Amendment

The terms of the President and Vice President of the United States shall end at noon on the twentieth day of January of the year when their terms of office are scheduled to expire. The terms of their successors shall then begin.

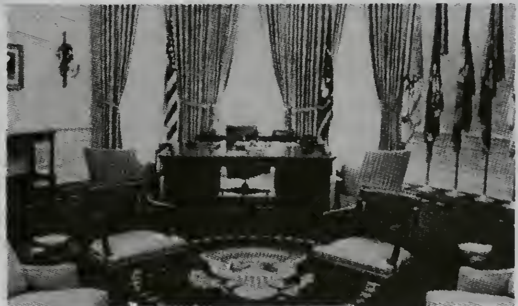
This provision gave the newly elected President and Vice President the RIGHT to assume their respective offices at noon on the twentieth day of January following their election the previous November.

Thus the Twentieth Amendment not only eliminated the "lame duck" sessions of Congress, but it also shortened the interval between the convening of Congress and the inauguration of the President and Vice President from three months (first Monday in December to March 4) to less than three weeks (January 3 to January 20).

One reason for the long intervening period originally provided for was the assumption that in the event that none of the candidates had a majority of electoral votes, it might take the members of the House a considerable amount of time to decide which of the candidates would be President. If the same problem existed for the Vice President, the Senate would need sufficient time to evaluate the candidates and make its selection for that office.

However, the development of a strong two-party system in the United States has consistently provided a majority for the winning candidates, making January 3 to January 20 a sufficient interval for Congress to assemble, organize, and count the electoral votes before the incoming President and Vice President take office.

One disadvantage of having the President's inauguration in March or January has been the weather. Although the climate in Washington, D.C., is not severely cold, there have been occasions when the weather has created serious problems. President William Henry Harrison caught pneumonia during his inauguration in 1841 and died after serving only thirty-one days in office. On January 20, 1985, it was so cold that the parades had to be cancelled and the swearing-in ceremony had to take place in the rotunda of the Capitol rather than along the east steps, where a special podium is customarily built for the occasion.



The Oval Office in the White House.

PROVISION

272

From the Twentieth Amendment

The Congress shall automatically assemble at least once each year. The first session shall commence at noon on the third day of January unless a law is passed appointing a different day.

This provision requires the Congress to meet at least once each year, but gives it the RIGHT to select an alternate date to meet should January 3 prove inconvenient for any reason.

There are always unforeseen circumstances which make it desirable to allow the Congress to adjust its opening session to an earlier or later time if necessary. The possibility of war or other exigency might also make the change of date desirable.

PROVISION

273

From the Twentieth Amendment

If the President-elect shall die before taking office, the Vice President-elect shall automatically become President. If a President shall not have been chosen by the time designated for the beginning of his term, or if the President-elect is unable to qualify for his office, the Vice President-elect shall act as President until the President-elect is qualified.

This provision gives the American people the RIGHT to have the office of President promptly filled in spite of any contravening circumstances which might occur.

The office of President of the United States is the most powerful political assignment in the world. The demands of living in an atomic age make it mandatory that this office remain functional at all times. The authors of this amendment recognized that there was a weakness in the transitional procedure as power is transferred from the incumbent President to the President-elect. A variety of mishaps might occur to prevent the new President from taking over—including the discovery of some disability. This provision was designed to fill this void.

PROVISION

274

From the Twentieth Amendment

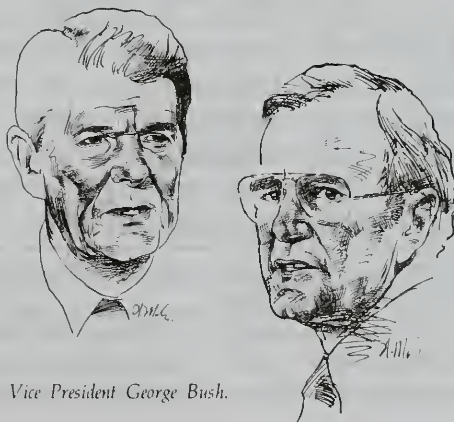
The Congress may provide, by law, for a situation wherein neither the President-elect nor the Vice President-elect shall have qualified to serve. The Congress shall decide how the temporary appointee shall be selected, and after his selection he shall act as President until a President- or Vice President-elect shall have qualified.

This provision gives the Congress the RIGHT to select an acting President of the United States in case neither the President nor the Vice President can qualify, and he shall continue acting as President until one of them can qualify.

It is conceivable that a situation could arise where neither the President nor the Vice President could get a majority vote as required by the Constitution. This could easily occur if a multitude of political parties suddenly appeared on the scene, a situation that already exists in many other countries. It sometimes requires a considerable length of time to work up a coalition government, the leader of which can enjoy the support of a majority in the legislature.

This provision anticipates such a situation and provides the necessary legal remedy to prevent a lapse of leadership during the qualifying process.

It is conceivable that a Vice President might qualify when the President-elect could not. In that case, the Vice President would serve as acting President until the President could qualify. However, the real problem arises where *neither* can qualify. This amendment gives Congress the power to select a person as acting President until either the President can qualify or the Vice President is available to serve in his place.



President Ronald Reagan and Vice President George Bush.

PROVISION

275

From the Twentieth Amendment

If no candidate for President or Vice President has received a majority of electoral votes, and the matter has been referred to the appropriate house but one of the candidates being considered shall die, Congress may, by law, determine how the House shall proceed in the selection of the President, or how the Senate shall proceed in the selection of a Vice President.

This provision gives Congress the RIGHT to determine how the House and the Senate shall proceed in case the selection of the President or Vice President devolves upon either house and one of the candidates under consideration dies before the selection is made.

It will be recalled that in the event the House must select the President, it makes its choice from among the three top candidates. In the event one of these should die before the choice was made, there was no clearcut procedure to guide the House from that point on. This provision enables the Congress to set up a procedure. It also authorizes the Congress to provide for a situation where two candidates are being considered for Vice President but the selection process is disrupted because one of them dies.

All of this may seem somewhat technical, but should these circumstances actually arise, this provision could be of critical importance in transferring power from one administration to another.

PROVISION

276

From the Twenty-first Amendment

The Eighteenth Amendment, prohibiting the manufacture, sale, transportation, or importation of intoxicating liquors, is hereby repealed. Nevertheless, the transportation or importation of intoxicating liquors into any state in violation of the laws of that state is prohibited.

This provision returned to the states the RIGHT to regulate the manufacture and distribution of alcoholic beverages, and gave each state the RIGHT not to have intoxicating liquors transported into its domain in violation of its laws.

This amendment did not legalize intoxicating liquors. It simply turned the problem back to the states.

Prior to the passage of the Eighteenth Amendment, nineteen states had already adopted statewide prohibition. Furthermore, due to the critical need for alcohol in connection with the manufacture of ammunition, all but two states adopted prohibition during World War I. It was the remarkable improvement in the quality of community life during this brief interval of wartime prohibition that led the political leaders to feel that the nation would support outright prohibition on a permanent basis.

However, after the Eighteenth Amendment was ratified and the Volstead Act had been passed (to provide for its enforcement), the whole idea ran into immediate resistance. Veterans returning from Europe were accustomed to drinking large quantities of beer and wine. Relaxed social standards after the war also contributed to a more casual attitude toward all "reform" movements. In addition, Prohibition gave a certain social status to hosts who could include a few drinks as part of the entertainment. A black market in bootleg alcohol soon attracted major criminal syndicates both in America and abroad. Heavy profits in illicit liquor also led to the corruption of judges, police, and law-enforcement officials on both the federal and state levels. Soon competition between criminal syndicates led to gang wars, secret assassinations, and shootouts on the streets of major cities.

All of these circumstances contributed to the repeal of the Eighteenth Amendment. However, four decades later, authorities are still wrestling with the problem of alcohol.

Each year thousands of alcohol-related deaths from automobile accidents, and thousands more from heart attack, liver disease, and other alcohol-related addiction, emphasize the need to recognize alcohol as a major domestic problem.

Many authorities believe that alcohol is the number-one drug problem in America, and that the issue of control must be addressed in a constitutional and intelligent manner. Clearly, Prohibition was not the answer. However, if extremely heavy taxes and heavy penalties had been imposed on the excessive consumption of hard liquors, leaving the use of lighter beverages relatively unrestricted, Prohibition might have worked. This would be especially true if the government began a campaign of education on alcohol similar to its campaign on tobacco, thereby alerting the general public to the health and safety hazards resulting from alcohol consumption — whether in casual drinks or habitual alcoholism.

PROVISION 277

From the Twenty-second Amendment

No person shall be elected to the office of President of the United States more than twice.

This provision gives the American people the RIGHT not to have a President occupy this high office perpetually, or even for long periods of time.

The Founders had a great dread of hereditary rulers, or elected officials who might gain control of an office and then refuse to relinquish it.

In the Constitutional Convention, it was proposed that the tenure of office for the President be limited to a term of four years. However, when a straw vote was taken, Madison noticed that Washington voted against it. It was assumed from this that Washington (whom everyone expected to be the first President) felt he might need more than four years to get the new government safely inaugurated.

Nevertheless, after President Washington had served two terms, he considered that sufficient, and refused the invitation to run for a third term. This became traditional so that Jefferson, Madison, and Monroe also served only two terms when they might have been elected for a third term.

In later years, Presidents who considered a third term, such as Ulysses S. Grant, found the notion unpopular.

Nevertheless, in 1940 the skills of a master politician, plus the circumstances of World War II, made it possible for President Franklin Delano Roosevelt to break the tradition and successfully get elected to a third term. The popular Democrat then went on to be elected to a fourth term in 1944. However, he died a few weeks after his fourth inauguration. Since the Republicans had taken over the Congress, they immediately initiated a strong drive to prevent the President from serving more than two terms. Congress approved this amendment on March 21, 1947, and it was ratified by the states on February 27, 1951.

PROVISION

278

From the Twenty-second Amendment

If a Vice President or any other person has acted as President of the United States for more than two years (in order to fill out the term of an elected President whom he replaced), that person can be elected to the office of President only one time. However, this amendment shall not affect the term of the person serving as President at the time this amendment becomes effective.

This provision gives the American people the RIGHT to limit a person who has replaced the President, and has functioned as such for two years or more, to be limited to one additional term.

This provision was necessary to settle the question of whether or not a partial term, filled by a Vice President, for example, constitutes a full term insofar as limiting the office to two terms is concerned.

This provision states that if a Vice President or other individual replaces the President for more than twenty-four months, it is counted as a full term.

PROVISION

279

From the Twenty-third Amendment

So that the people living in the District of Columbia, which is the seat of government, shall have the opportunity to vote for the President and Vice President at regular elections, the Congress shall provide for the appointment of electors numbering no more than the electors of the least populous state of the union, and the vote of these electors shall be counted as though the District of Columbia were a state.

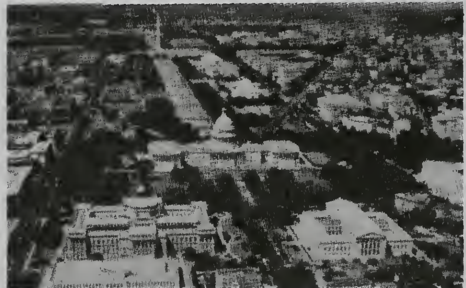
This provision gave the residents of the federal District of Columbia the RIGHT to vote for the President and Vice President (i.e., their electors) in regular elections.

As the population of the District of Columbia increased, leaders of the Democratic party demanded that District residents be allowed to vote in presidential elections, even though there was no provision for this practice in the Constitution. The entire problem could have been solved very simply through joint action by Congress and the state of Maryland allowing these people to vote as citizens of Maryland (which originally owned the entire area of the present District of Columbia).

However, the sponsors of the above amendment had larger plans. The Twenty-third Amendment was designed to lay the foundation for a later amendment (which was passed by Congress but rejected by the states) to treat the District of Columbia almost as a state and allow it to have two Senators and a Congressman.

It can be seen why some authorities consider the Twenty-third Amendment (as well as the proposed amendment making Washington, D.C., a city-state), a serious mistake. This would give substance to the demands of other major cities that would like to become city-states as well. There is also the strong possibility that this effort to transform a metropolitan area into a city-state violates the provision of Article V which says that "No state, without its consent, shall be deprived of its equal suffrage in the Senate."

This means that even if an amendment were passed and ratified by three-fourths of the states, any one of the remaining states could veto the amendment by denying its consent to have a city treated as a state when it had never been organized as a state.



Some have sought to make Washington, D.C., a city-state.

PROVISION 280

From the Twenty-fourth Amendment

No person can be prohibited from voting in a federal election by either the United States or any state because that person shall have failed to pay a poll tax or any other tax.

This amendment gives every American who is otherwise eligible the RIGHT to vote, whether or not that person owes any taxes.

Many poor Americans, both black and white, were excluded from voting in certain states because they had to pay a poll tax (so much per person) before they could vote.

Actually, the poll tax was a very small tax of one or two dollars to help pay the costs of the election. Nevertheless, it was sufficient to discourage many of the poor from voting. Many civil-rights proponents considered poll taxes to be particularly prejudicial to blacks. It was also the poorer citizens, both black and white, who tended to get behind on their taxes. This amendment allowed them to vote regardless of their tax status.

PROVISION 281

From the Twenty-fifth Amendment

Whenever a President dies, resigns, or is removed from office, the Vice President shall become President. If the office of Vice President becomes vacant, the President shall, with the approval of a majority of the House and the Senate, appoint a Vice President.

This amendment gives the Vice President the RIGHT to replace the President should he die, resign, or be removed from office. It also gives the President the RIGHT to appoint a Vice President, with the consent of the House and the Senate, in case that office should fall vacant.

Until this amendment was adopted, a vacancy in the office of Vice President could not be filled until the next presidential election. The new procedure has been followed twice since its ratification in 1967. The first time was when Spiro T. Agnew resigned his office as Vice President in 1973 and President Richard M. Nixon appointed Congressman Gerald R. Ford of Michigan to serve in his place—following the approval of a majority of the House and the Senate. The second incident occurred when President Nixon resigned and Vice President Ford became President. Ford then appointed Nelson A. Rockefeller to be the new Vice President, and Rockefeller was confirmed by a ma-

jority of the House and the Senate. Ford and Rockefeller thus became the first nonelected President and Vice President serving together in the history of the United States.

This provision has been criticized because it is felt it would have been safer to have required the traditional two-thirds of the Senate to approve an appointment to the Vice Presidency than to require merely a majority approval by the House and the Senate. The present procedure allows a confirmation to simply follow party lines.

PROVISION

282

From the Twenty-fifth Amendment

If the President advises the Speaker of the House and the president pro tempore of the Senate that he is unable to discharge the duties of his office, the Vice President shall become acting President until such time as the President advises these same officials of the House and the Senate that he is able to resume his duties.

This provision gives the President the RIGHT to relinquish his duties to the Vice President if he is disabled for any reason, and it also gives him the RIGHT to return to his duties should he consider himself capable of doing so.

It will be observed that the judgmental determination of whether the President is disabled lies entirely within his own province. He can decide when to turn over his duties to the Vice President and when to demand them back again. Although he must advise the Speaker of the House and the president pro tempore of the Senate in each instance, there is no discretionary power in either of them to prevent the President from assigning his duties to his Vice President or resuming them again at a later date.

PROVISION

283

From the Twenty-fifth Amendment

If the Vice President and a majority of the Cabinet (or special commission set up by the Congress) shall decide that the President is unable to discharge the duties of his office, they shall give their opinion in writing to the Speaker of the House and the president pro tempore of the Senate. Thereafter the

Vice President shall immediately take over the duties of acting President of the United States.

This provision gives the Vice President the RIGHT to take over the duties of acting President if a majority of the Cabinet agree with him that the President is incapable of discharging the duties of his office.

It is believed by some constitutional authorities that this provision opens the door to serious abuse, perhaps even short-circuiting the entire elective process of both the President and the Vice President under certain circumstances.

This becomes more apparent after careful consideration of the rest of this amendment.

At this point it is sufficient to simply point out that if a Vice President has ambitions to seize the Presidency, and can get a majority of the Cabinet to agree with him, he is given the power in this provision to summarily take over the duties of the President, with or without the consent of the President. The fact that the power to make the change is left in the hands of the individual who will benefit the most politically by initiating the change is, in and of itself, a dangerous procedure.

PROVISION 284

From the Twenty-fifth Amendment

If the President feels he is still able to perform his duties, he shall advise the Speaker of the House and the president pro tempore of the Senate, but he may not resume his duties if the Vice President and a majority of the Cabinet still believe he is incapable of doing so and advise the same officials of the fact.

This provision gives the President the RIGHT to advise the officials of Congress that he believes himself capable of resuming his duties, but it gives the Vice President and a majority of the Cabinet the RIGHT to prevent the President from assuming his duties if they advise the congressional officials that this is their opinion.

Notice that the Vice President is acting as President at the time the President tells the congressional leaders he is ready to again take over his office. Notice also that the Vice President continues to occupy the President's desk simply by advising the congressional leaders that he and the majority of the Cabinet do not believe the President is yet capable of performing his duties. Once again the power to make the immediate decision lies in the hands of the one who has the most to gain politically by preventing the President from returning to his official duties.

PROVISION

285

From the Twenty-fifth Amendment

If there is a dispute between the President and his Vice President as to the President's ability to resume his office, it will be up to Congress to decide this issue. If the Congress is not in session, it must be recalled within forty-eight hours. The Congress will then have twenty-one days to reach a conclusion. Meanwhile, the Vice President shall continue to occupy the position of acting President. After an appropriate investigation, the Congress will then cast its vote and the President shall resume his office unless two-thirds of both houses vote against him.

This provision gives Congress the RIGHT to determine whether or not the President is capable of resuming his office according to his request. However, it requires a two-thirds vote against the President to keep him from resuming his office.

The requirement of a two-thirds vote to keep the President from resuming his office was designed to overcome the possibility of the vote dividing along partisan lines. There must be a strong feeling in both parties that the President is still disabled or he will be allowed to resume his office.

The glaring fallacy in all of this is that an ambitious Vice President, who may have initiated this unseating of the President in the first place, is still acting as President during the time the matter is being adjudicated. An interval of this kind could be contrived by a Vice President and a dominant bloc in Congress to get through a critical bill which they know the elected President would veto. Such contriving to manipulate the machinery of government is an established segment of federal political history and should not be overlooked.

Constitutional scholars have another concern. According to Murphy's Law, if a system has a potential flaw that would allow something to go wrong, it eventually will go wrong. Apply Murphy's Law to the Twenty-fifth Amendment and several potential flaws emerge, one of which we have already pointed out.

Another flaw would be a situation where the kingmakers behind the throne could get two of their cronies in as President and Vice President without ever having them elected to office. The fact that this has already happened in the normal course of events demonstrates that this procedure is subject to nefarious manipulation. Here are the steps in one possible scenario which a group of politicians with oligarchical ambitions might achieve. They could pursue the following steps:

1. Support a man for President who is very popular but is secretly known to

be extremely vulnerable to scandalous embarrassment should his personal activities become known.

2. Run a loyal member of the team, who will carry out orders, as Vice President.
3. After both men have been elected to office, expose the President so that he will either be impeached or have to resign.
4. The Vice President then takes over the office of President.
5. Since the office of Vice President is now vacant, the new President nominates for this position a man who could not be elected by ordinary political means.
6. The new President uses illness or some other excuse to resign from his high office.
7. The new Vice President takes over as President of the United States.
8. As President he nominates his own Vice President.

Of course there are those who say that nothing so bizarre would ever happen in the United States. Nevertheless, this scenario demonstrates that there is a crevice in the concrete of the Twenty-fifth Amendment.

And, after all, we must not forget Murphy's Law and the fact that we have already had one instance where the country had an administration with both an unelected President and an unelected Vice President.

PROVISION

286

From the Twenty-sixth Amendment

The voting rights of any citizen of the United States who is eighteen years or older shall not be denied or abridged by the United States or any state on account of age.

This amendment gives every American who is eighteen years or older, and is not precluded by mental disability or criminal forfeiture of his franchise, the RIGHT to vote.

No amendment has been adopted more quickly than this one. It was proposed on March 23, 1971, and ratified in July of the same year.

The determination of the legal age for adulthood has always been a matter of conjecture. In the past it has usually been set at age twenty-one; however, the government presumed to draft young men at the age of eighteen, and therefore the point was raised that if they are old enough to fight, they certainly should be old enough to vote. This was the original Anglo-Saxon criteria.

The main objection to the reduction of the voting age from twenty-one to eighteen has been that young people are very impressionable at this age. It has been observed that they become much more settled in their thinking as well as their system of values by the time they reach twenty-one.

Radical or agitational movements are

often emotionally attractive to eighteen-year-olds but hold little or no attraction to them a few years later. Because youth are inclined to be innovative, the liberal and progressive groups expected that they would reap a windfall from the eighteen-year-old vote.

As it has turned out, however, the eighteen-year-old franchise has not produced any significant change in the political process. Young people have not voted in a bloc, and they seem to take a serious and responsible attitude toward this new trust.

Thus we come to the last of the 286 principles which have been built into the Constitution and its amendments. By and large, the technical aspects of the Constitution have been preserved. This includes the general framework and its rules of procedure as outlined by the Founders. In fact, out of the 286 principles, only 38 have suffered any significant neglect or mutilation. However, these 38 involve the very foundations of the Constitution. As a result, a monumental change has occurred in the Founders' formula of a "divided, balanced, limited" government. To our astonishment, we find that the governmental policy of the past seventy-five years has seriously mutilated nearly two-thirds of the Founders' original vision of a free, prosperous, peaceful society. No longer is the American eagle in the balanced center, but it is leaning precariously to the left. Senators no longer represent the sovereign entity of the states, but only the voting populace, as do Congressmen. As a result, states' rights have become emaciated, anemic, and weak. In Washington, they are neither defended nor represented. Taxes have reached confiscatory levels, and the national debt exceeds the debts of all other nations in the world *combined*. Federal regulations have extended beyond interstate commerce and now penetrate deeply into the very core of intrastate commerce. The money system is under the control of neither the people nor their government. The retirement insurance for millions of Americans is drifting into bankruptcy, while health care and medical care for the elderly is completely out of rational perspective. "People power" under the Constitution is rapidly drifting into the manipulation of special-interest groups — centers of political, economic, and media power — over which the people have no control.

All of this carries an important message to the Americans of this generation. Something has happened to the Founders' original success formula. Every American needs to understand more about what has occurred.

When all is said and done, education is the key — as suggested by the following statement credited to Benjamin Franklin:

"A nation of well-informed men who have been taught to know and prize the rights which God has given them cannot be enslaved. It is in the region of ignorance that tyranny begins."

PROVISION 287

From the Twenty-seventh Amendment

If a law is passed which changes the compensation of Senators or Representatives, it shall not go into effect until after a regular election of Representatives.

This provision gives the people the RIGHT to ensure that any salary changes which Congressman and Senators may give themselves may not be enjoyed by them until after the people express themselves in the next general election.

It will be recalled that some states hesitated ratifying the Constitution because it had no Bill of Rights. George Washington and others encouraged them to give their suggestions for a Bill of Rights and the states sent in 189 proposals. These were reduced to seventeen by James Madison and submitted to Congress. Congress passed twelve and submitted them to the states for ratification. Ten were ratified and became our first ten amendments known as the Bill of Rights. What happened to the other two proposals? Since the 7-year deadline for ratifying an Amendment was not imposed until the 18th Amendment, the proposals continued to float, waiting for enough states to ratify them. One was included in the Fourteenth Amendment in 1868 and the other was ratified as the Twenty-seventh Amendment in 1992, nearly 203 years after being submitted to the states!

It was James Madison who commented that the provision for Congress to set its own salary was "indecent." His concern is valid. Since congressional pay has not been as closely watched by the people as it should have been, Congress has gradually increased the salary for its members to an alarming amount as shown in the discussion of Provision 62 in this text. Due to these major pay increases a search for answers ensued. In 1982, a Texas university student rediscovered this proposed amendment. Over the next ten years, and, no doubt, spurred by concern over these major pay increases, additional state legislatures ratified this amendment. Finally, in 1992, the Twenty-seventh Amendment was ratified by the required number of states and was added to the Constitution.

---

1. Kelly and Harbison, *The American Constitution*, p. 630.

Striving for A Higher Level of Civilization

Our review of the 287 provisions contained in the Constitution and its amendments makes it clear that the Founders were striving mightily to attain a higher order of civilization than mankind has ever known. They knew that freedom, peace, and prosperity could be America's greatest export—and that the principles embodied in our Constitution could enrich the lives of all mankind. This is our greatest challenge today: to help America climb to the eighth step, so the rest of the world can follow.

Certainly it is a slippery pathway to reach Step Eight (worldwide peace, prosperity, and freedom), just as it has been a hazardous adventure to reach and maintain Step Seven (constitutional supremacy). Nevertheless, even in their upward struggle during the past two hundred years, the American people have been able to lead the

world in several remarkable ways. And we can continue, if we will only stay true to the vision of the Founders.

Consider, for example, the effort to produce an adequate supply of food. The American farmer has taken advantage of technology, machinery, fossil fuels, fertilizers, pesticides, and nutritional feed additives for dairy and meat production, until today each American farmer is able to feed his own family and some seventy-eight other people in the United States and around the world. To produce this much food in 1918, before the widespread use of tractors, would have required around 61 million horses and mules. To feed this many work animals today would require about 180 million acres of cropland—almost half of the American cropland now in cultivation.

The American food-production miracle was made possible because the farmer was left free to expand his resources, buying larger farms for more economic use of machinery and perfecting his methods of cultivation.

When Freedom Falls, Famine Follows

In contrast to this we have the approach of dictatorships, such as we find in Ethiopia. To appreciate what happened in Ethiopia, it is helpful to remember that Emperor Haile Selassie ruled Ethiopia for forty-five years and is considered a benevolent ruler in comparison to the present regime. He tried to use education and modern methods to gradually prepare his people for a more advanced society with a greater degree of self-determination. However, radical forces used extravagant promises, which made the people impatient and stirred them into rebellion. As a result, on September 12, 1974, Haile Selassie was seized by the radicals and thrown into a dungeon, where he died. The radical element then launched its "reform," destroyed thirty thousand people to terrorize the general population into submission, and imported twenty thousand troops to "keep the peace." Almost immediately thousands of foreign "advisors" arrived to

establish the new order. This order included, among other things, the collectivization of agriculture.

Suddenly, Ethiopia, which had been the breadbasket of Africa, ceased to be a breadbasket. The peasant farmers were no longer free to use the food-raising methods of the past. Traditionally, Ethiopian farmers had saved food in good years to prepare for possible bad years. The new regime outlawed this practice by calling it "hoarding." Peasants had also traditionally followed a practice of reinvesting their surplus in their own farms so as to expand production. The new regime denounced this as "capitalist accumulation" and "private investment," which was no longer allowed. Historically, Ethiopian tradesmen engaged in food distribution had bought products in the food-surplus areas to sell in food-deficient areas. The new regime outlawed this practice as "exploitation," and thereupon replaced the entire free market system of Ethiopia with numerous tightly supervised government commissions.

The next step was a so-called land reform, where peasants were assigned a few acres from land appropriated from large landowners—but these were entirely too small to justify cultivation by mechanical equipment. Large commune farms were also established under the government, but these immediately suffered the same disastrous crop failures and the same drastic drop in production that have characterized commune farms all over the world.

The results were sadly predictable. Within a few years Ethiopia was suffering widespread famine, with several million people starving. In less than a decade, Ethiopia had gone from the breadbasket of Africa to a bleak land of desolation and unfulfilled promises.

The Freedom Formula

The tragedy in Ethiopia is not significantly different from that which has occurred in other nations and in other times when statist dictatorships or monarchial rule has crowded out man's instinct for freedom. Historically, dictatorships and other forms of tyranny have always compounded human problems. Conversely, it has been people thriving in a climate of freedom who have somehow found the best solutions.

This was the important lesson which Adam Smith emphasized in his famous book of 1776, *The Wealth of Nations.* It was he who advocated a system of strong private enterprise and a system of free marketing which no nation of that period had yet dared to try. But the Founders decided to try it. They determined to combine the teachings of Adam Smith with the long list of freedom-based political principles they set forth in the Constitution. And not only was freedom to be the watchword for their new republic, but eventually they hoped it would spread around the world.

America's Upward Reach

A careful study of the Founders' writings will reveal that many aspects of their success formula yet remain to be fulfilled, and where these elements are lacking, the United States still reflects weaknesses the Founders knew we could overcome through continuous perseverance. Nevertheless, even at this stage, it has become apparent that the American people have accomplished something in human relations which has never been achieved before. They have demonstrated that over 230 million people from Europe, Asia, Africa, the Orient, Latin America, and the islands of the sea can be united and live in a free society in relative harmony—and receive mutual benefits which none of them could have found in isolation or without freedom.

America has been called a gigantic melting pot, which indeed she is. But more importantly, she has demonstrated that these widely varied cultures can be blended together in a free society and can prosper as a nation.

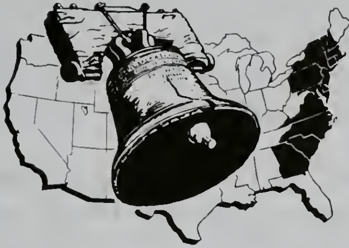
It is interesting that, in order to accomplish this, the Founders felt the American republic had to be large, both geographically and in population. They also felt that as other nations gained their freedom they must combine together in great unions as the United States had done.

Small, Free Republics Must Unite to Survive

During this study we have noted that the Founders saw many serious disadvantages in small republics trying to face the world alone. They said small republics would be more easily corrupted by ambitious leaders. They would be susceptible to insurrections internally and military assaults externally. They would also be too small and too weak to provide an economy capable of supporting an adequate military defense, public services, and the necessary machinery of government. Since their own tiny republics and states were so weak and vulnerable, the Founders set out to make the United States a broad-based coalition of many states. As individual states united together they could still have all the advantages of local self-government, but, as a union, they could combine their strength in national defense, supply a coordinated system of central services, and present a united front in foreign relations.

They noted a further advantage in having a large population under a union of states: if any radical movements or insurrections erupted, they would tend to burn themselves out before they destroyed the whole nation. Furthermore, a larger nation is too diverse to be easily suppressed under the control of an ambitious tyrant. Additionally, they perceived a great advantage in establishing a national common market among all the states, where they could exchange goods freely and could assist one another in case of drought or disaster in particular areas of the country.

The Founders' advice to other suppressed nations was to struggle for freedom and then to unite with some larger coalition of free states for their mutual protection and economic development.



The Western Hemisphere Seen as the First Bastion of Freedom

When it came to freedom, the Founders were expansionists, but not imperialists. They talked about having Canada, Cuba, and other neighboring regions join them and become a part of the United States of North America. They also favored the liberation of Central and South America, as well as Mexico, and encouraged both Simón Bolívar and José de San Martin in their aspiration to set up a union to be called the United States of Latin America. Although these efforts failed initially, it does not eliminate the possibility that this could be achieved in the future.

The Founders were determined that while the rest of the Western Hemisphere was liberating itself, there should be no further incursions into this continent by the imperialistic powers of Europe or Asia. It is interesting that the British Foreign Office eventually encouraged this same policy. King George III finally died in 1820 after several years of complete insanity, and by 1823 the new British administration was actually enouraging the United States to issue its Monroe Doctrine to preclude France, Spain, and all other European imperialistic powers from expanding their dominions in the Western Hemisphere.

An American Pledge

The Monroe Doctrine also contains a pledge which modern American leaders might well remember, and that is the promise that even though the United States would look upon any foreign invasion of the Western Hemisphere as a threat to her own security, she would not use her military power to interfere in the domestic or internal affairs of any other nation. Of course, any defensive action to protect the Western Hemisphere would affect the internal affairs of some nations *indirectly,* but such action must not have the intent of advancing any imperialistic ambitions of the United States. This was the promise.

The Founders' Policy of Disentangling Alliances

For hundreds of years the more advanced nations of Europe and Asia tried to maintain a "balance of power" in an effort to promote peace. The fact that these various alliances led more often to war than peace is a matter of record in the more tragic annals of world history.

The Founders advocated an approach different from that of the Europeans. Jefferson clearly articulated their future hopes when he said, "Peace, commerce, and honest friendship with all nations, entangling alliances with none."[1]

The Founders' position on foreign relations has been frequently misinterpreted. Their policy was not one of "isolationism" but one of "separatism." They looked upon the United States as the cornerstone of a mighty fortress providing security, freedom, and prosperity. Using the United States' formula, other nations could be invited to join into a union of free states which could survive without alliances and without entangling themselves in the quarrels of other nations.

Through "separatism," without "isolationism," the Founders wanted America to maintain cordial relations with all while having entangling alliances with none. They intended to become strong and independent, but not the policeman of the world.

Switzerland Followed the Founders' Policy

The Founders' original policy was similar in many ways to that of modern Switzerland, which has successfully remained neutral and aloof from entangling alliance through two world wars and numerous European quarrels. During these periods of intense military action, Switzerland did not follow a policy of "isolationism," but rather one of universal diplomatic relations with all who might wish to come to Switzerland to buy, sell, borrow, or bank. She took a hostile posture toward none unless threatened. In general terms, this is analogous to the doctrine of "separatism" practiced by the early American leaders.

Dealing with Interdependence

The Founders were well aware that no nation is an island. This is especially true in our own age of modern technology where a widespread network of commercial channels facilitates the flow of food, textiles, machinery, chemicals, metals, and a multitude of other necessities all around the globe. The Founders would have heartily favored this flourishing development. However, they warned against the tendency to favor one nation over another or to mix *political* interdependence with commercial and economic interdependence. They steadfastly opposed alliances which involved political interdependence. Their motto seems to have been summed up in the phrase, "Coordination yes, but consolidation no."

In our day, when the nations of the world are being drawn closer together by transportation, communications, and commercial interdependence, the Founders' philosophy may seem a little old-fashioned, but Americans have learned

during several recent wars that political and military interdependence is not the diplomatic prize its advocates had proclaimed it would be. In the end, the United States found itself trying to do a job which became impossible when its assumed allies flagrantly defaulted in their commitments and even their cooperation.

The formula drawn up by America's Founders now seems to have more merit than ever before, and modern Americans might do well to recapture the Founders' long-range dream and their carefully drawn plan to ultimately build a free, prosperous, and peaceful world.

On this theme George Washington had much to say, encouraging an approach that was fair to foreign nations, but still protected American interests.

Washington Describes the Founders' Plans

The universality of friendly foreign relations which Washington hoped to engender is reflected in the following statement from his famous Farewell Address:

"Observe good faith and justice toward all nations. Cultivate peace and harmony with all. Religion and morality enjoin this conduct; and can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and, at no distant period, a great nation to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence."[2]

From experience, Washington was well aware of the natural tendency to classify nations as "friends" or "enemies." He felt that in the absence of actual hostility toward the United States, every effort should be made to cultivate friendship with all. He wrote:

"In the execution of such a plan nothing is more essential than that permanent, inveterate antipathies against particular nations and passionate attachments for others should be excluded, and that in place of them just and amicable feelings toward all should be cultivated. The nation which indulges toward another an habitual hatred or an habitual fondness is in some degree a slave. It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest."[3]

Washington pointed out that "antagonism by one nation against another disposes each more readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable when accidental or trifling occasions of dispute occur."[4]

The Problem with "Playing Favorites"

There is also a danger in having the United States become overly attached to some nations because of kinship or sentimental affection toward them. Washington warned:

"So, likewise, a passionate attachment of one nation for another produces a

variety of evils. Sympathy for the favorite nation, facilitating the illusion of an imaginary common interest in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and wars of the latter without adequate inducement or justification. It leads also to concessions to the favorite nation of privileges denied to others, which is apt doubly to injure the nation making the concessions, by unnecessarily parting with what ought to have been retained, and by exciting jealousy, ill will, and disposition to retaliate in the parties from whom equal privileges are withheld."[5]

Concerning Most-Favored Nations

Washington also warned against giving "most-favored" status to particular nations. It opens up the United States to strong foreign influences which could subvert the security or best interests of the United States. In fact, American officials seeking to accommodate friendly allies could inadvertently compromise American interests to a very dangerous extent. Washington said:

"Against the insidious wiles of foreign influence, I conjure you to believe me, fellow citizens, the jealousy of a free people ought to be *constantly* awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government. But that jealousy, to be useful, must be impartial, else it becomes the instrument of the very influence to be avoided instead of a defense against it. Excessive partiality for one foreign nation and excessive dislike of another cause those whom they actuate to see danger only on one side and serve to veil and even second the arts of influence on the others. Real patriots, who may resist the intrigues of the favorite, are liable to become suspected and odious, while its tools and dupes usurp the applause and confidence of the people to surrender their interests."[6]

What American Foreign Policy Should Be

Washington then made his famous declaration of the Founders' policy of foreign relations:

"The great rule of conduct for us, in regard to foreign nations, is in extending our commercial relations to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop."[7]

Only recently, Washington had seen certain American politicians getting the United States embroiled in European quarrels. He saw these operating to the distinct disadvantage of the United States. Therefore, he warned:

"Europe has a set of primary interests which to us have none, or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves, by artificial ties, in the ordinary

combinations and collisions of her friendships or enmities.... Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interests, humor, or caprice?"[8]

A World Policy

And what he had said concerning Europe he would say to the rest of the world:

"It is our true policy to steer clear of permanent alliances with any portion of the foreign world. So far, I mean, as we are now at liberty to do it, for let me not be understood as capable of patronizing infidelity to existing engagements (I hold the maxim no less applicable to public than to private affairs that honesty is always the best policy). I repeat it, therefore: let those engagements be observed in their genuine sense. But, in my opinion, it is unnecessary and would be unwise to extend them."[9]

He said that "temporary alliances" may be justified for "extraordinary emergencies," but otherwise, "harmony, liberal intercourse with all nations are recommended by policy, humanity, and interest."[10]

Visualizing America as a World Peacemaker

It was the hope of the Founders that the strength of America would provide such a bulwark of defense for the free world that it would discourage warmongering nations from unleashing an attack on weaker neighbors. In our nuclear age this has become of paramount importance. There must be some means of neutralizing the effect of a surprise attack which could obliterate millions of people. The United States has taken the initiative in developing a defensive "peacemaker"—a defense mechanism that will destroy military *weapons* instead of *people.* On June 10, 1984, an intercontinental ballistic missile was experimentally fired from the coast of California, and when it was a hundred miles above the earth it was shot down by a new, nonnuclear defense weapon fired from an atoll far out in the Pacific.

This marked the beginning of a promising new era. If nonnuclear defense weapons can provide a protective network around the earth, no nation could fire a nuclear warhead without having it destroyed soon after takeoff. Such a system could be made available to all nations, so that no nation could make war with nuclear missiles, regardless of their political ideology. This new American effort is appropriately called MAS—Mutually Assured Survival.

The United States can help lead the entire world to a condition of greater peace and prosperity.

The Moral Willpower to Stand Up for Peace

J. Reuben Clark, former Under Secretary of State and former U.S. Ambassador to Mexico, described the role of America as a great world peacemaker. He wrote:

"America, multi-raced and multi-nationed, is by tradition, by geography, by citizenry, by natural sympathy, and by material interest, the great neutral nation of the earth. God so designed it. Drawn from all races, creeds, and nations, our sympathies run to every oppressed people. Our feelings, engaged on opposite sides of great differences, will in their natural course, if held in due and proper restraint, neutralize the one [with] the other. Directed in right channels, this great body of feeling for the one side or the other will ripen into sympathy and love for all misguided and misled fellowmen who suffer in any cause, and this sympathy and love will run out to all humanity in its woe....

"Having in mind our position as the great world neutral, ... we should announce our unalterable opposition to any plan to starve these innocent peoples ...—the women, the children, the sick, the aged, and the infirm—and declare that when actual and bona fide mass starvation shall come to any of them, no matter who they are, we shall do all that we properly may do to see that they are furnished with food....

"If we shall rebuild our lost moral power and influence by measures such as these which will demonstrate our love for humanity, our justice, our fair-mindedness, we ... shall then be where ... we can offer mediation between the two belligerents.

"America, the great neutral, will thus become the Peacemaker of the world, which is her manifest destiny if she lives the law of peace."[11]

The Challenge for Today

America *can* be "the Peacemaker of the World." She *can* help other nations discover the formula for freedom and prosperity. But there is an important prerequisite: Americans must first rediscover that formula for themselves, as it is embodied in the 286 principles found in the Constitution.

It is helpful to remember that the Constitution is not a stale, dead document. Rather, it is a vital, living blueprint for the success of the United States as a nation and its citizens as individuals.

A quick comparison between the constitutional principles and our practices today will show where we have gone astray. And the remedy is simple: return to the basic principles of the Founders' formula.

Of course, the first step to improvement and reform is *education*. The next step is *action*. The principles of the Constitution were not meant only to be studied, but to be applied. That, then, is our challenge today.

---

1. Bergh, 3:321.
2. Fitzpatrick, *The Writings of George Washington*, 35:231.
3. Ibid.
4. Ibid.
5. Ibid., p. 232.
6. Ibid., p. 233.
7. Ibid.
8. Ibid., p. 234.
9. Ibid.
10. p. 235.
11. Skousen, *The Five Thousand Year Leap*, pp. 276–78.

BIBLIOGRAPHY

Adams, John. *Letters of John Adams, Addressed to His Wife.* Edited by Charles Francis Adams. 2 vols. Boston: Charles C. Little and James Brown, 1841.

———. *The Works of John Adams.* Edited by Charles Francis Adams. 10 vols. Boston: Little, Brown and Co., 1850–56.

Adler, Mortimer J., et al., eds. *The Annals of America.* 20 vols. by 1977. Chicago: Encyclopaedia Britannica, 1968–.

Allison, Andrew M., et al. *The Real Thomas Jefferson.* 2d ed., rev. and enl. Washington: National Center for Constitutional Studies, 1983.

Atwood, Harry. *Our Republic.* Merrimac, Mass.: Destiny Publishers, 1974.

Bancroft, George. *History of the Formation of the Constitution.* New York: D. Appleton and Co., 1882.

Bastiat, Frederic. *The Law.* 1850. Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1974.

Blackstone, William. *Commentaries on the Laws of England.* Edited by William Carey Jones. 2 vols. San Francisco: Bancroft-Whitney Company, 1916.

Bowen, Catherine Drinker. *Miracle at Philadelphia.* London: Hamish Hamilton, 1967.

Carson, Clarence B. *The Rebirth of Liberty: The Founding of the American Republic, 1760–1800.* Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1976.

Cherry, Conrad, ed. *God's New Israel.* Englewood Cliffs, N.J.: Prentice-Hall, 1971.

Chinard, Gilbert. *Thomas Jefferson: The Apostle of Americanism.* Ann Arbor, Mich.: University of Michigan Press, 1964.

Corwin, Edward S. *The Constitution and What It Means Today.* 13th ed. rev. Princeton, N.J.: Princeton University Press, 1973.

Elliot, Jonathan, ed. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution.* 5 vols. Philadelphia: J.B. Lippincott Company, 1901.

Farrand, Max, ed. *The Records of the Federal Convention of 1787.* 4 vols. New Haven, Conn.: Yale University Press, 1937.

Fiske, John. *The Critical Period of American History, 1783–1789.* The Historical Writings of John Fiske, vol. 12. Boston: Houghton Mifflin Company, 1916.

Flexner, James T. *George Washington in the American Revolution, 1775–1783.* Boston: Little, Brown and Company, 1967.

Franklin, Benjamin. *The Writings of Benjamin Franklin.* Edited by Albert Henry Smyth. 10 vols. New York: Macmillan Co., 1905–7.

Hamilton, Alexander. *The Works of Alexander Hamilton.* Edited by Henry Cabot Lodge. 12 vols. New York: G.P. Putnam's Sons, 1904.

Hamilton, Alexander; Madison, James; and Jay, John. *The Federalist Papers.* New York: Mentor Books, 1961.

Howe, John R. *The Changing Political Thought of John Adams.* Princeton, N.J.: Princeton University Press, 1966.

Jefferson, Thomas. *The Complete Jefferson.* Edited by Saul K. Padover. New York: Tudor Publishing Co., 1943.

———. *The Family Letters of Thomas Jefferson.* Edited by Edwin Morris Betts and James Adam Bear, Jr. Columbia, Mo.: University of Missouri Press, 1966.

———. *The Papers of Thomas Jefferson.* Edited by Julian P. Boyd. 20 vols. by 1982. Princeton, N.J.: Princeton University Press, 1950–.

———. *The Writings of Thomas Jefferson.* Edited by Paul Leicester Ford. 10 vols. New York: G.P. Putnam's Sons, 1892–99.

———. *The Writings of Thomas Jefferson.* Edited by Albert Ellery Bergh. 20 vols. Washington: Thomas Jefferson Memorial Association, 1907.

Jensen, Merrill, ed. *The Documentary History of the Ratification of the Constitution.* 15 vols. by 1984. Madison, Wis.: State Historical Society of Wisconsin, 1976–.

Kelly, Alfred H., and Harbison, Winfred A. *The American Constitution: Its Origins and Development.* 3d ed. New York: W.W. Norton and Co., 1963.

Koch, Adrienne, ed. *The American Enlightenment.* New York: George Braziller, 1965.

Konefsky, Samuel J. *John Marshall and Alexander Hamilton: Architects of the American Constitution.* New York: Macmillan Co., 1964.

Lancaster, Bruce. *From Lexington to Liberty.* New York: Doubleday, 1955.

Larson, Martin A., ed. *Jefferson: Magnificent Populist.* Washington: Robert B. Luce, 1981.

Leckie, Robert. *The Wars of America.* New York: Harper and Row, 1981.

Locke, John. *Second Essay Concerning Civil Government.* Great Books of the Western World, vol. 35. Chicago: Encyclopaedia Britannica, 1952.

Lovell, Colin Rhys. *English Constitutional and Legal History.* New York: Oxford University Press, 1962.

Madison, James. *The Debates in the Federal Convention of 1787 Which Framed the Constitution of the United States of America.* Edited by Gaillard Hunt and James Brown Scott. New York: Oxford University Press, 1920.

———. *Letters and Other Writings of James Madison.* Edited by William C. Rives and Philip R. Fendall. 4 vols. Philadelphia: J.B. Lippincott, 1865.

———. *The Papers of James Madison.* Edited by Robert A. Rutland. 14 vols. by 1983. Chicago: University of Chicago Press, 1962–.

Malone, Dumas. *Jefferson the Virginian.* Jefferson and His Time, vol. 1. Boston: Little, Brown and Company, 1948.

McMaster, John Bach, and Stone, Frederick D., eds. *Pennsylvania and the Federal Constitution, 1787–1788.* 1888. New York: Da Capo Press, 1970.

Miller, John C. *Triumph of Freedom.* Boston: Little, Brown and Company, 1948.

Morison, Samuel Eliot. *Oxford History of the American People.* New York: Oxford University Press, 1965.

Norton, Thomas James. *The Constitution of the United States: Its Sources and Its Applications.* New York: World Publishing Co., 1922.

———. *Undermining the Constitution: A History of Lawless Government.* New York: Devin-Adair Co., 1950.

Oaks, Dallin H., ed. *The Wall Between Church and State.* Chicago: University of Chicago Press, 1963.

Patterson, Richard S., and Dougall, Richardson. *The Eagle and the Shield: A History of the Great Seal of the United States.* Washington: U.S. Department of State, 1976.

Rand, Howard B. *Digest of the Divine Law.* Merrimac, Mass.: Destiny Publishers, 1943.

Randall, Henry S. *The Life of Thomas Jefferson.* 3 vols. New York: Derby and Jackson, 1859.

Randolph, Sarah N. *The Domestic Life of Thomas Jefferson.* New York: Harper and Bros., 1871.

The Right to Keep and Bear Arms. Report of the Senate Subcommittee on the Constitution. Washington: U.S. Government Printing Office, February 1982.

Shannon, Fred Albert. *Economic History of the People of the United States.* New York: Mac-

millan Co., 1934.

Skousen, W. Cleon. *The Five Thousand Year Leap: Twenty-eight Ideas That Changed the World*. Salt Lake City: Freemen Institute, 1981.

Smith, Adam. *The Wealth of Nations*. 2 vols. New Rochelle, N.Y.: Arlington House, n.d.

Spooner, Lysander. *An Essay on the Trial by Jury*. 1852. New York: Da Capo Press, 1971.

Story, Joseph. *Commentaries on the Constitution of the United States*. 3d ed. 2 vols. Boston: Little, Brown and Company, 1858.

Tansill, Charles Callan, ed. *The Making of the American Republic: The Great Documents, 1774–1789*. New Rochelle, N.Y.: Arlington House, n.d.

Tocqueville, Alexis de. *Democracy in America*. 1835, 1840. 12th ed. 2 vols. New York: Vintage Books, 1945.

Turner, Sharon. *The History of the Anglo-Saxons*. 5th ed. London: Longman, Rees, Orme, Brown, Green, and Longman, 1836.

Tuveson, Ernest Lee. *Redeemer Nation*. Chicago: University of Chicago Press, 1974.

Ward, Christopher. *The War of the Revolution*. 2 vols. New York: Macmillan Co., 1953.

Washington, George. *The Writings of George Washington*. Edited by John C. Fitzpatrick. 39 vols. Washington: United States Government Printing Office, 1931–44.

Weinberg, Albert. *Manifest Destiny*. Gloucester, Mass.: Peter Smith Publishers, 1958.

Wells, William V. *The Life and Public Services of Samuel Adams*. 3 vols. Boston: Little, Brown and Company, 1865.

The statue of King George III being pulled down in New York.

THE DECLARATION OF INDEPENDENCE

Action of Second Continental Congress, July 4, 1776.
The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitles them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,--That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.--Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good!

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness

his invasion on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the meantime exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For Quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offenses:

For abolishing the free System of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Government:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attention to our British brethren. We have warned them

from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and to consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

Connecticut	Roger Sherman Samuel Huntington William Williams Oliver Wolcott
Delaware	Caesar Rodney George Read Thomas McKean
Georgia	Button Gwinnett Lyman Hall George Walton
Maryland	Samuel Chase William Paca Thomas Stone Charles Carroll
Massachusetts	John Hancock Samuel Adams John Adams Robert Treat Paine Elbridge Gerry
New Hampshire	Josiah Bartlett William Whipple Matthew Thornton
New Jersey	Richard Stockton John Witherspoon Francis Hopkinson John Hart Abraham Clark
New York	William Floyd Philip Livingston Francis Lewis Lewis Morris
North Carolina	William Hooper Joseph Hewes John Penn
Pennsylvania	Robert Morris Benjamin Rush Benjamin Franklin John Morton George Clymer James Smith George Taylor James Wilson George Ross
Rhode Island	Stephen Hopkins William Ellery
South Carolina	Edward Rutledge Thomas Heyward, Jr. Thomas Lynch, Jr. Arthur Middleton
Virginia	George Wythe Richard Henry Lee Thomas Jefferson Benjamin Harrison Thomas Nelson, Jr. Francis Lightfoot Lee Carter Braxton

Our Constitution

The Constitution contains nearly three hundred separate principles of effective government.

THE CONSTITUTION OF THE UNITED STATES

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

Legislative Branch

Section. 1. -- *All lawmaking power in* ***Congress***

All lawmaking power in 2 houses, Senate and House of Representatives. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. -- ***House*** *of Representatives*

1. Election to the House. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

2. Qualifications for members of House. No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

3. Representatives and taxes apportioned by population. [Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.]* The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. Vacancies. When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

5. Power of impeachment in House. The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3. -- ***Senate***

1. Senate membership, terms of office. The Senate of the United States shall be composed of two Senators from each State, [chosen by the Legislature thereof,]** for six Years; and each Senator shall have one Vote.

2. 1/3 of Senate elected every 2 years; how vacancies filled. Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first

**Changed by section 2 of the Fourteenth Amendment.*

***Changed by the Seventeenth Amendment.*

Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]*

3. Qualifications of Senators. No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

4. Vice President is President of Senate. The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

5. Other officers. The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

6. Trials of impeachment in Senate. The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

7. Penalty of impeachment convictions. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. -- ***Elections and Meetings for both*** *houses*

1. Regulation of elections. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

2. Congress to meet annually. The Congress shall assemble at least once in every Year, and such Meeting shall be [on the first Monday in December,]* unless they shall by Law appoint a different Day.

Section. 5. -- ***Rules for each house***

1. Organization and independence of each house of Congress. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such manner, and under such Penalties as each House may provide.

2. Rules of proceedings. Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

3. Journals of each house. Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

4. Restrictions on adjournment. Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6. -- *Rights and duties of* ***Congressmen***

1. Pay and privileges of members. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session

**Changed by the Seventeenth Amendment*

***Changed by section 2 of the Twentieth Amendment*

of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

2. ***Prohibitions on members.*** No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section. 7. -- *Procedure for* ***Making Laws***

1. Revenue bills to originate in House. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

2. How bills become law. Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approves he shall sign it, but if not he shall return it, with his Objections, to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each house respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

3. How orders, resolutions become law. Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section. 8. -- ***Powers*** *granted to Congress*

1-17. ***Enumerated powers.***

1. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

2. To borrow Money on the credit of the United States;

3. To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

4. To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

5. To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

6. To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

7. To establish Post Offices and post Roads;

8. To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

9. To constitute Tribunals inferior to the supreme Court;

10. To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

11. To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

12. To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

13. To provide and maintain a Navy;

14. To make Rules for the Government and Regulation of the land and naval Forces;

15. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

16. To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

17. To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings;--And

18. Implied powers. To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section. 9. -- *Powers* ***forbidden*** *to* ***Congress***

1-6. Prohibitions on Congress.

1. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

2. The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

3. No Bill of Attainder or ex post facto Law shall be passed.

4. No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.*

5. No Tax or Duty shall be laid on Articles exported from any State.

6. No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

7. How public money is drawn. No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

8. Titles of nobility prohibited. No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section. 10. -- *Powers* ***forbidden*** *to* ***states***

1. No treaties, letters of marque or reprisal, coining of money, bills of credit; no bills of attainder, ex post facto laws, titles of nobility. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make Any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

2. No duties on imports, exports except with Congress' approval. No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the

**See Sixteenth Amendment*

Revision and Controul of the Congress.

3. No duty on tonnage, troops, ships of war, agreements with other states, or war without Congress' approval. No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article. II.

Executive Branch

Section. 1. -- *The* ***office*** *of President*

1. President's and Vice President's term of office. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

2. Who appoints electoral college. Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

3. Original method of electing President and Vice President. [The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]*

4. Time of electoral vote. The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

5. Qualifications of President. No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

6. Vacancy and line of succession. [In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.]**

7. Salary of President. The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive

---

**Changed by the twelfth Amendment*

**Changed by the Twenty-Fifth Amendment

within that Period any other Emolument from the United States, or any of them.

8. Oath of office. Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:--"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section. 2. -- ***Powers** of President*

1. Military and civil duties. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

2. Making treaties and appointing officers. He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

3. Filling vacancies during recess of Congress. The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3 -- ***Responsibilities** of President*

Messages; extra sessions; receiving ambassadors; execution of laws. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section. 4. -- ***Impeachment** of President*

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article. III.

Judicial Branch

Section. 1. -- ***One Supreme Court** - inferior courts*

Judicial power vested; judges. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section. 2. -- ***Jurisdiction** of courts, all crimes tried by **jury***

1. Areas of jurisdiction. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--[between a State and Citizens of another State;--]* between Citizens of different States,--between Citizens of

**Changed by the Eleventh Amendment*

the same State claiming Lands under Grants of different States, [and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.]*

2. Original and appellate jurisdiction of Supreme Court; Congress can limit appellate jurisdiction. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

3. Rules respecting trials. The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section. 3. -- ***Treason** defined - punishment*

1. Treason--giving aid and comfort to enemies. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

2. Congress to declare punishment. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article. IV.

Relations of the States

Section. 1. -- *Full **faith and credit** to each state*

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State; And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

Section. 2. -- ***Citizen'** rights and fugitives*

1. Equal privileges for all citizens. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

2. Extradition of criminals. A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

3. Fugitive slaves to be returned [now obsolete]. [No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.]*

Section. 3. -- *New **states** and **territories***

1. Creation and admission of new states. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

2. Congressional power over public lands. The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4 -- ***Protection** of States*

Protection and republican government guaranteed to states. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

**Changed by the Thirteenth Amendment*

Article. V.

Amendment Process

Amendments proposed by 2/3; Ratified by 3/4. The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several states, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

Article. VI.

Debts of Confederation
Surpremacy Clause
Duties of Office

1. Public debts under Articles of Confederation to be assumed and paid. All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. Supreme law of land defined. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

3. Official to uphold Constitution; no religious test required. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article. VII.

Ratification

Constitution takes effect when 9 states approve. The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In Witness whereof We have hereunto subscribed our Names,

G. Washington -- Presid.

Delaware:
George Read
Gunning Bedford, Jr.
John Dickinson
Richard Bassett
Jacob Broom

Maryland:
James McHenry
Daniel of St. Thomas Jenifer
Daniel Carroll

Virginia:
John Blair
James Madison, Jr.

North Carolina:
William Blount
Richard Dobbs Spaight
Hugh Williamson

South Carolina:
John Rutledge
Charles Cotesworth Pinckney
Charles Pinckney
Pierce Butler

Georgia:
William Few
Abraham Baldwin

New Hampshire:
John Langdon
Nicholas Gilman

Massachusetts:
Nathaniel Gorham
Rufus King

Connecticut:
William Samuel Johnson
Roger Sherman

New York:
Alexander Hamilton

New Jersey:
William Livingston
David Brearley
William Paterson
Jonathan Dayton

Pennsylvania:
Benjamin Franklin
Thomas Mifflin
Robert Morris
George Clymer
Thomas Fitzsimons
Jared Ingersoll
James Wilson
Gouverneur Morris

Attest,
William Jackson, secretary

*Congress OF THE United States

begun and held at the City of New-York,
on Wednesday the fourth of March,
one thousand seven hundred and eighty nine

THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best insure the beneficent ends of its institutions:

RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as Amendments to the Constitution of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; viz!.

ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution....

FREDERICK AUGUSTUS MUHLENBERG
Speaker of the House of Representatives.
JOHN ADAMS, Vice-President of the United States,
and President of the Senate.

ATTEST,
JOHN BECKLEY, Clerk of the House of Representatives.
SAM. A. OTIS Secretary of the Senate.

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Amendment I.

Freedom of Religion, Speech, the Press, and of Assembly and Petition

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II.

Right to Keep and Bear Arms

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III.

Quartering of Troops

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV.

Protection Against Unreasonable Search and Seizure

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V.

Protection of Rights to Life, Liberty, and Property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or

---

* *On September 25th, 1789, Congress transmitted to the state legislatures twelve proposed amendments, two of which, having to do with Congressional representation and Congressional pay, were not adopted. The remaining ten amendments became the Bill of Rights which were ratified on December 15, 1791.*

public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI.

Rights of an Accused Person in Criminal Cases

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII.

Right to Jury Trial in Civil Suits

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII.

Prohibition of Excessive Bail, Excessive Fines, and Cruel and Unusual Punishments

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX.

People Retain Rights Not Enumerated in Constitution

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X.

Rights Not Delegated Are Reserved to States or People

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XI.

Protection of State Sovereignty (Ratified February 7, 1795)

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XII.

Election of the President and Vice President (Ratified June 15, 1804)

The Electors shall meet in their respective states, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;--The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;--The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the

House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice.

[And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President--]* The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment XIII.

Abolition of Slavery
(Ratified December 6, 1865)

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV.

Protection of Citizenship Rights
(Ratified July 9, 1868)

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

**Superseded by section 3 of the Twentieth Amendment*

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV.

Suffrage for All Races
(Ratified February 3, 1870)

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XVI.

Federal Income Tax
(Ratified February 3, 1913)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Amendment XVII.

Election of Senators by Popular Vote
(Ratified April 8, 1913)

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII.

Prohibition
(Ratified January 16, 1919;
repealed December 5, 1933,
by Amendment 21)

[Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.]

Amendment XIX.

Womens Suffrage
(Ratified August 18, 1920)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XX.

Presidential and Congressional Terms
(Ratified January 23, 1933)

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall

begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI.

Repeal of Prohibition
(Ratified December 5, 1933)

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XXII.

President Limited to Two Terms
(Ratified February 27, 1951)

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Amendment XXIII.

Presidential Electors for
the District of Columbia
(Ratified March 29, 1961)

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such

duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV.

Prohibition of Poll Tax
(Ratified January 23, 1964)

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV.

Filling Vacancies in the Office of President or Vice President
(Ratified February 10, 1967)

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI.

Suffrage for Eighteen-Year-Olds
(Ratified July 1, 1971)

Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXVII.

Changes in Salaries of Senators and Representatives
(Ratified May 7, 1992)

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

CONSTITUTIONAL INDEX

Photographically reprinted from The Constitution of the United States, *House Document 92-157 (Washington, D.C.: U.S. Government Printing Office, 1972), pp. 27-73.*

	Article[1]	Section	Clause
A			
Abridged. The privileges or immunities of citizens of the United States shall not be. [Amendments]	14	1	------
Absent members, in such manner and under such penalties as it may provide. Each House is authorized to compel the attendance of	1	5	1
Accounts of receipts and expenditures of public money shall be published from time to time. A statement of the	1	9	7
Accusation. In all criminal prosecutions the accused shall be informed of the cause and nature of the. [Amendments]	6	------	------
Accused shall have a speedy public trial. In all criminal prosecutions the. [Amendments]	6	------	------
He shall be tried by an impartial jury of the State and district where the crime was committed. [Amendments]	6	------	------
He shall be informed of the nature of the accusation. [Amendments]	6	------	------
He shall be confronted with the witnesses against him. [Amendments]	6	------	------
He shall have compulsory process for obtaining witnesses in his favor. [Amendments]	6	------	------
He shall have the assistance of counsel for his defense. [Amendments]	6	------	------
Actions at common law involving over twenty dollars shall be tried by jury. [Amendments]	7	------	------
Acts, records, and judicial proceedings of another State. Full faith and credit shall be given in each State to the	4	1	------
Acts. Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	------
Adjourn from day to day. A smaller number than a quorum of each House may	1	5	1
Adjourn for more than three days, nor to any other place than that in which they shall be sitting. Neither House shall, during the session of Congress, without the consent of the other	1	5	4
Adjournment, the President may adjourn them to such time as he shall think proper. In case of disagreement between the two Houses as to	2	3	------
Admiralty and maritime jurisdiction. The judicial power shall extend to all cases of	3	2	------
Admitted by the Congress into this Union, but no new States shall be formed or erected within the jurisdiction of any other State. New States may be	4	3	1

[1] **Article of original Constitution or of amendment.**

	Article [1]	Section	Clause
Nor shall any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures and of Congress	4	3	1
Adoption of the Constitution shall be valid. All debts and engagements contracted by the confederation and before the	6	-----	1
Advice and consent of the Senate. The President shall have power to make treaties by and with the	2	2	2
To appoint ambassadors or other public ministers and consuls by and with the	2	2	2
To appoint all other officers of the United States not herein otherwise provided for by and with the	2	2	2
Affirmation. Senators sitting to try impeachments shall be on oath or	1	3	6
To be taken by the President of the United States. Form of the oath or	2	1	8
No warrants shall be issued but upon probable cause and on oath or. [Amendments]	4	-----	-----
To support the Constitution. Senators and Representatives, members of State legislatures, executive and judicial officers, both State and Federal, shall be bound by oath or	6	-----	3
Age. No person shall be a Representative who shall not have attained twenty-five years of	1	2	2
No person shall be a Senator who shall not have attained thirty years of	1	3	3
Right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or any State on account of age. [Amendments]	26	1	-----
Agreement or compact with another State without the consent of Congress. No State shall enter into any	1	10	3
Aid and comfort. Treason against the United States shall consist in levying war against them, adhering to their enemies, and giving them	3	3	1
Alliance or confederation. No State shall enter into any treaty of	1	10	1
Ambassadors, or other public ministers and consuls. The President may appoint	2	2	2
The judicial power of the United States shall extend to all cases affecting	3	2	1
Amendments to the Constitution. Whenever two-thirds of both Houses shall deem it necessary, Congress shall propose	5	-----	-----
To the Constitution. On application of the legislatures of two-thirds of the States, Congress shall call a convention to propose	5	-----	-----
Shall be valid when ratified by the legislatures of, or by conventions in, three-fourths of the States	5	-----	-----
Answer for a capital or infamous crime unless on presentment of a grand jury. No person shall be held to. [Amendments]	5	-----	-----
Except in cases in the land or naval forces, or in the militia when in actual service. [Amendments]	5	-----	-----

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as Congress shall make. In what cases the Supreme Court shall have	3	2	2
Application of the legislature or the executive of a State. The United States shall protect each State against invasion and domestic violence on the	4	4	------
Application of the legislatures of two-thirds of the States, Congress shall call a convention for proposing amendments to the Constitution. On the	5	------	------
Appointment of officers and authority to train the militia reserved to the States respectively	1	8	16
Of such inferior officers as they may think proper in the President alone. Congress may by law vest the	2	2	2
In the courts of law or in the heads of departments. Congress may by law vest the	2	2	2
Of Presidential and Vice-Presidential electors. District of Columbia to have power of. [Amendments]	23	1	------
Apportionment of representation and direct taxation among the several States. Provisions relating to the	1	2	3
Of Representatives among the several States. Provisions relating to the. [Amendments]	14	2	------
Appropriate legislation. Congress shall have power to make all laws necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof	1	8	18
Congress shall have power to enforce the thirteenth article, prohibiting slavery by. [Amendments]	13	2	------
Congress shall have power to enforce the provisions of the fourteenth article by. [Amendments]	14	5	------
Congress shall have power to enforce the provisions of the fifteenth article by. [Amendment]	15	2	------
Congress shall have power to enforce the provisions of the twenty-third article by. [Amendments]	23	2	------
Appropriation of money for raising and supporting armies shall be for a longer term than two years. But no	1	8	12
Appropriations made by law. No money shall be drawn from the Treasury but in consequence of	1	9	7
Approve and sign a bill before it shall become a law. The President shall	1	7	2
He shall return it to the House in which it originated, with his objections, if he do not	1	7	2
Armies, but no appropriation for that use shall be for a longer term than two years. Congress shall have power to raise and support	1	8	12
Armies. Congress shall make rules for the government and regulation of the land and naval forces	1	8	14
Arms shall not be infringed. A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear. [Amendments]	2	------	------
Arrest during their attendance at the session of their respective Houses, and in going to and returning from the same. Members shall in all cases, except treason, felony, and breach of the peace, be privileged from	1	6	1

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
Arsenals. Congress shall exercise exclusive authority over all places purchased for the erection of	1	8	17
Articles exported from any State. No tax or duty shall be laid on	1	9	5
Arts by securing to authors and inventors their patent rights. Congress may promote the progress of science and the useful	1	8	8
Assistance of counsel for his defense. In all criminal prosecutions the accused shall have the. [Amendments]	6	------	------
Assumption of the debt or obligations incurred in aid of rebellion or insurrection against the United States. Provisions against the. [Amendments]	14	4	------
Attainder or ex post facto law shall be passed. No bill of	1	9	3
Attainder, ex post facto law, or law impairing the obligation of contracts. No State shall pass any bill of	1	10	1
Attainder of treason shall not work corruption of blood or forfeiture, except during the life of the person attainted	3	3	2
Authors and inventors the exclusive right to their writings and inventions. Congress shall have power to secure to	1	8	8
B			
Bail. Excessive bail shall not be required, nor excessive fines nor cruel and unusual punishments imposed. [Amendments]	8	------	------
Ballot for President and Vice President. The electors shall vote by. [Amendment]	12	------	------
Ballot. If no person have a majority of the electoral votes for President and Vice President, the House of Representatives shall immediately choose the President by. [Amendments]	12	------	------
Bankruptcies. Congress shall have power to pass uniform laws on the subject of	1	8	4
Basis of representation among the several States. Provisions relating to the. [Amendments]	14	2	------
Bear arms shall not be infringed. A well-regulated militia being necessary to the security of a free State, the right of the people to keep and. [Amendments]	2	------	------
Behavior. The judges of the Supreme and inferior courts shall hold their offices during good	3	1	------
Bill of attainder or ex post facto law shall be passed. No	1	9	3
Bill of attainder, ex post facto law, or law impairing the obligation of contracts. No State shall pass any	1	10	1
Bills of credit. No State shall emit	1	10	1
Bills for raising revenue shall originate in the House of Representatives. All	1	7	1
Bills which shall have passed the Senate and House of Representatives shall, before they become laws, be presented to the President	1	7	2
If he approve, he shall sign them: if he disapprove, he shall return them, with his objections, to that House in which they originated	1	7	2
Upon the reconsideration of a bill returned by the President with his objections, if two-thirds of each House agree to pass the same, it shall become a law	1	7	2

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
Upon the reconsideration of a bill returned by the President, the question shall be taken by yeas and nays	1	7	2
Not returned by the President within ten days (Sundays excepted), shall, unless Congress adjourn, become laws	1	7	2
Borrow money on the credit of the United States. Congress shall have power to	1	8	2
Bounties and pensions, shall not be questioned. The validity of the public debt incurred in suppressing insurrection and rebellion against the United States, including the debt for. [Amendments]	14	4	------
Breach of the peace, shall be privileged from arrest while attending the session, and in going to and returning from the same. Senators and Representatives, except for treason, felony, and	1	6	1
Bribery, or other high crimes and misdemeanors. The President, Vice President, and all civil officers shall be removed on impeachment for and conviction of treason	2	4	------
C			
Capital or otherwise infamous crime, unless on indictment of a grand jury, except in certain specified cases. No person shall be held to answer for a. [Amendments]	5	------	------
Capitation or other direct tax shall be laid unless in proportion to the census or enumeration. No	1	9	4
Captures on land and water. Congress shall make rules concerning	1	8	11
Casting vote. The Vice President shall have no vote unless the Senate be equally divided	1	3	4
Census or enumeration of the inhabitants shall be made within three years after the first meeting of Congress, and within every subsequent term of ten years thereafter	1	2	3
Census or enumeration. No capitation or other direct tax shall be laid except in proportion to the	1	9	4
Chief Justice shall preside when the President of the United States is tried upon impeachment. The	1	3	6
Choosing the electors and the day on which they shall give their votes, which shall be the same throughout the United States. Congress may determine the time of	2	1	4
Citizen of the United States at the adoption of the Constitution shall be eligible to the office of President. No person not a natural-born	2	1	5
Citizen of the United States. No person shall be a Senator who shall not have attained the age of thirty years, and been nine years a	1	3	3
No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a	1	2	1
Right to vote shall not be denied or abridged by the United States or any State for failure to pay any poll tax or other tax. [Amendments]	24	1	------

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
Right of citizens to vote shall not be denied or abridged by the United States or any State on account of sex. [Amendments]	19	------	------
Right to vote shall not be denied or abridged by the United States or any State to any citizen eighteen years or older, on account of age. [Amendments]	26	1	----
Citizenship. Citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States	4	2	1
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. [Amendments]	14	1	------
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. [Amendments]	14	1	------
Nor shall any State deprive any person of life, liberty, or property without due process of law. [Amendments]	14	1	------
Nor deny to any person within its jurisdiction the equal protection of the laws. [Amendments]	14	1	------
Citizens or subjects of a foreign state. The judicial power of the United States shall not extend to suits in law or equity brought against one of the States by the citizens of another State, or by. [Amendments]	11	------	------
Civil officers of the United States shall, on impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors be removed. All	2	4	------
Claims of the United States or any particular State in the territory or public property. Nothing in this Constitution shall be construed to prejudice	4	3	2
Classification of Senators. Immediately after they shall be assembled after the first election, they shall be divided as equally as may be into three classes	1	3	2
Classification of Senators. The seats of the Senators of the first class shall be vacated at the expiration of the second year	1	3	2
The seats of the Senators of the second class at the expiration of the fourth year	1	3	2
The seats of the Senators of the third class at the expiration of the sixth year	1	3	2
Coin a tender in payment of debts. No State shall make anything but gold and silver	1	10	1
Coin money and regulate the value thereof and of foreign coin. Congress shall have power to	1	8	5
Coin of the United States. Congress shall provide for punishing the counterfeiting the securities and current	1	8	6
Color, or previous condition of servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race. [Amendments]	15	1	------
Comfort. Treason against the United States shall consist in levying war against them, and giving their enemies aid and	3	3	1

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Commander in chief of the Army and Navy, and of the militia when in actual service. The President shall be	2	2	1
Commerce with foreign nations, among the States, and with Indian tribes. Congress shall have power to regulate	1	8	3
Commerce or revenue. No preference shall be given to the ports of one State over those of another by any regulation of	1	9	6
Vessels clearing from the ports of one State shall not pay duties in those of another	1	9	6
Commissions to expire at the end of the next session. The President may fill vacancies that happen in the recess of the Senate by granting	2	2	3
Common defense, promote the general welfare, &c. To insure the. [Preamble]	------	------	------
Common defense and general welfare. Congress shall have power to provide for the	1	8	1
Common law, where the amount involved exceeds twenty dollars, shall be tried by jury. Suits at. [Amendments]	7	------	------
No fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the. [Amendments]	7	------	------
Compact with another State. No State shall, without consent of Congress, enter into any agreement or	1	10	3
Compact with a foreign power. No State shall, without the consent of Congress, enter into any agreement or	1	10	3
Compensation of Senators and Representatives to be ascertained by law	1	6	1
Compensation of the President shall not be increased nor diminished during the period for which he shall be elected	2	1	7
Compensation of the judges of the Supreme and inferior courts shall not be diminished during their continuance in office	3	1	------
Compensation. Private property shall not be taken for public use without just. [Amendments]	5	------	------
Compulsory process for obtaining witnesses in his favor. In criminal prosecutions the accused shall have. [Amendments]	6	------	------
Confederation. No State shall enter into any treaty, alliance, or	1	10	1
Confederation. All debts contracted and engagements entered into before the adoption of this Constitution shall be valid against the United States under it, as under the	6	------	1
Confession in open court. Conviction of treason shall be on the testimony of two persons to the overt act, or upon	3	3	1
Congress of the United States. All legislative powers shall be vested in a	1	1	------
Shall consist of a Senate and House of Representatives	1	1	------
Shall assemble at least once in every year, which shall be on the first Monday of December, unless they by law appoint a different day	1	4	2
May at any time alter regulations for elections of Senators and Representatives, except as to the places of choosing Senators	1	4	1

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Congress of the United States—Continued			
Each House shall be the judge of the elections, returns, and qualifications of its own members	1	5	1
A majority of each House shall constitute a quorum to do business	1	5	1
A smaller number may adjourn from day to day and compel the attendance of absent members	1	5	1
Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member	1	5	2
Each House shall keep a journal of its proceedings	1	5	3
Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days	1	5	4
Senators and Representatives shall receive a compensation to be ascertained by law	1	6	1
They shall in all cases, except treason, felony, and breach of peace, be privileged from arrest during attendance at their respective Houses, and in going to and returning from the same	1	6	1
No Senator or Representative shall, during his term, be appointed to any civil office which shall have been created, or of which the emoluments shall have been increased, during such term	1	6	2
No person holding any office under the United States, shall, while in office, be a member of either House of Congress	1	6	2
All bills for raising revenue shall originate in the House of Representatives	1	7	1
Proceedings in cases of bills returned by the President with his objections	1	7	2
Shall have power to lay and collect duties, imposts, and excises, pay the debts, and provide for the common defense and general welfare	1	8	1
Shall have power to borrow money on the credit of the United States	1	8	2
To regulate foreign and domestic commerce, and with the Indian tribes	1	8	3
To establish uniform rule of naturalization and uniform laws on the subject of bankruptcies	1	8	4
To coin money, regulate its value and the value of foreign coin, and to fix the standard of weights and measures	1	8	5
To punish the counterfeiting of securities and current coin of the United States	1	8	6
To establish post-offices and post-roads	1	8	7
To promote the progress of science and the useful arts	1	8	8
To constitute tribunals inferior to the Supreme Court	1	8	9
To define and punish piracies and felonies on the high seas and to punish offenses against the law of nations	1	8	10
To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water	1	8	11

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
Congress of the United States—Continued			
To raise and support armies, but no appropriations of money to that use shall be for a longer term than two years	1	8	12
To provide and maintain a Navy	1	8	13
To make rules for the government of the Army and Navy	1	8	14
To call out the militia to execute the laws, suppress insurrections, and repel invasions	1	8	15
To provide for organizing, arming, and equipping the militia	1	8	16
To exercise exclusive legislation over the District fixed for the seat of government, and over forts, magazines, arsenals, and dockyards	1	8	17
To make all laws necessary and proper to carry into execution all powers vested by the Constitution in the Government of the United States	1	8	18
No person holding any office under the United States shall accept of any present, emolument, office or title of any kind from any foreign state, without the consent of	1	9	8
May determine the time of choosing the electors for President and Vice-President and the day on which they shall give their votes	2	1	4
The President may, on extraordinary occasions, convene either House of	2	3	------
The manner in which the acts, records, and judicial proceedings of the States shall be prescribed by	4	1	------
New States may be admitted by Congress into this Union	4	3	1
Shall have power to make all needful rules and regulations respecting the territory or other property belonging to the United States	4	3	2
Amendments to the Constitution shall be proposed whenever it shall be deemed necessary by two-thirds of both Houses of	5	------	------
Persons engaged in insurrection or rebellion against the United States disqualified for Senators or Representatives in. [Amendments]	14	3	------
But such disqualification may be removed by a vote of two-thirds of both Houses of. [Amendments]	14	3	------
Shall have power to enforce, by appropriate legislation, the thirteenth amendment. [Amendments]	13	2	------
Shall have power to enforce, by appropriate legislation, the fourteenth amendment. [Amendments]	14	5	------
Shall have power to enforce, by appropriate legislation, the fifteenth amendment. [Amendments]	15	2	------
Shall have power to enforce, by appropriate legislation, the nineteenth amendment. [Amendments]	19	------	------
Sessions, time of assembling. [Amendments]	20	2	------
Shall have power to enforce, by appropriate legislation, the twenty-third amendment. [Amendments]	23	2	------

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Congress of the United States—Continued			
Shall have power to enforce, by appropriate legislation, the twenty-fourth amendment. [Amendments]	24	2	------
Shall have power to enforce, by appropriate legislation, the twenty-sixth amendment. [Amendments]	26	2	------
To direct appointment of electors for President and Vice-President by District of Columbia. [Amendments]	23	1	------
Consent. No State shall be deprived of its equal suffrage in the Senate without its	5	------	------
Consent of Congress. No person holding any office of profit or trust under the United States shall accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign potentate, without the	1	9	8
No State shall lay any imposts, or duties on imports, except what may be absolutely necessary for executing its inspection laws, without the	1	10	2
No State shall lay any duty of tonnage, keep troops or ships of war in time of peace, without the	1	10	3
No State shall enter into any agreement or compact with another State, or with a foreign power, without the	1	10	3
No State shall engage in war unless actually invaded, or in such imminent danger as will not admit of delay, without the	1	10	3
No new State shall be formed or erected within the jursidiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures thereof, as well as the	4	3	1
Consent of the legislature of the State in which the same may be. Congress shall exercise exclusive authority over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other needful buildings by the	1	8	17
Consent of the legislatures of the States and of Congress. No States shall be formed by the junction of two or more States or parts of States without the	4	3	1
Consent of the other. Neither House, during the session of Congress, shall adjourn for more than three days, nor to any other place than that in which they shall be sitting, without the	1	5	4
Consent of the owner. No soldier shall be quartered in time of peace in any house without the. [Amendments]	3	------	------
Consent of the Senate. The President shall have power to make treaties, by and with the advice and	2	2	2
The President shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court and all other officers created by law and not otherwise herein provided for, by and with the advice and	2	2	2

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Constitution, in the Government of the United States, or in any department or officer thereof. Congress shall have power to pass all laws necessary to the execution of the powers vested by the	1	8	18
Constitution, shall be eligible to the office of President. No person except a natural-born citizen, or a citizen at the time of the adoption of the	2	1	4
Constitution. The President, before he enters upon the execution of his office, shall take an oath to preserve, protect, and defend the	2	1	7
Constitution, laws, and treaties of the United States. The judicial power shall extend to all cases arising under the	3	2	1
Constitution shall be so construed as to prejudice any claims of the United States, or of any State (in respect to territory or other property of the United States). Nothing in the	4	3	2
Constitution. The manner in which amendments may be proposed and ratified	5	------	------
Constitution as under the Confederation shall be valid. All debts and engagements contracted before the adoption of the	6	------	1
Constitution and the laws made in pursuance thereof, and all treaties made, or which shall be made, by the United States, shall be the supreme law of the land. The	6	------	2
The judges in every State, anything in the constitution or laws of a State to the contrary notwithstanding, shall be bound thereby	6	------	2
Constitution. All officers, legislative, executive, and judicial, of the United States, and of the several States, shall be bound by an oath to support the	6	------	3
But no religious test shall ever be required as a qualification for any office or public trust	6	------	3
Constitution between the States so ratifying the same. The ratification of the conventions of nine States shall be sufficient for the establishment of the	7	------	------
Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. The enumeration in the. [Amendments]	9	------	------
Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people. Powers not delegated to the United States by the. [Amendments]	10	------	------
Constitution, and then engaged in rebellion against the United States. Disqualification for office imposed upon certain class of persons who took an oath to support the. [Amendments]	14	3	------
Constitution. Done in convention by the unanimous consent of the States present, September 17, 1787	7	------	2
Contracts. No State shall pass any ex post facto law, or law impairing the obligation of	1	10	1
Controversies to which the United States shall be a party: between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming			

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
lands under grants of different States; between a State or its citizens and foreign states, citizens, or subjects. The judicial power shall extend to	3	2	1
Convene Congress or either House, on extraordinary occasions. The President may	2	3	------
Convention for proposing amendments to the Constitution. Congress, on the application of two-thirds of the legislatures of the States, may call a	5	------	------
Convention, by the unanimous consent of the States present on the 17th of September, 1787. Adoption of the Constitution in	7	------	2
Conventions of nine States shall be sufficient for the establishment of the Constitution. The ratification of the	7	------	------
Conviction in cases of impeachment shall not be had without the concurrence of two-thirds of the members present	1	3	7
Copyrights to authors for limited times. Congress shall have power to provide for	1	8	8
Corruption of blood. Attainder of treason shall not work	3	3	2
Counsel for his defense. In all criminal prosecutions the accused shall have the assistance of. [Amendments]	6	------	------
Counterfeiting the securities and current coin of the United States. Congress shall provide for the punishment of	1	8	6
Courts. Congress shall have power to constitute tribunals inferior to the Supreme Court	1	8	9
Courts of law. Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the heads of departments, or in the	2	2	2
Courts as Congress may establish. The judicial power of the United States shall be vested in one Supreme Court and such inferior	3	1	------
Courts. The judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	------
Their compensation shall not be diminished during their continuance in office	3	1	------
Credit. No State shall emit bills of	1	10	1
Credit of the United States. Congress shall have power to borrow money on the	1	8	2
Credit shall be given in every other State to the public acts, records, and judicial proceedings of each State. Full faith and	4	1	------
Crime, unless on a presentment of a grand jury. No person shall be held to answer for a capital or otherwise infamous. [Amendments]	5	------	------
Except in cases in the military and naval forces, or in the militia when in actual service. [Amendments]	5	------	------
Crimes and misdemeanors. The President, Vice President, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other	2	4	------
Crimes, except in cases of impeachment, shall be tried by jury. All	3	2	3
They shall be tried in the State within which they may be committed	3	2	3

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
When not committed in a State, they shall be tried at the places which Congress may by law have provided	3	2	3
Criminal prosecutions, the accused shall have a speedy and public trial by jury in the State and district where the crime was committed. In all. [Amendments]	6	------	------
He shall be informed of the nature and cause of the accusation. [Amendments]	6	------	------
He shall be confronted with the witnesses against him. [Amendments]	6	------	------
He shall have compulsory process for obtaining witnesses in his favor. [Amendments]	6	------	------
He shall have the assistance of counsel in his defense. [Amendments]	6	------	------
Criminate himself. No person as a witness shall be compelled to. [Amendments]	5	------	------
Cruel and unusual punishments inflicted. Excessive bail shall not be required, nor excessive fines imposed, nor. [Amendments]	8	------	------
D			
Danger as will not admit of delay. No State shall, without the consent of Congress, engage in war, unless actually invaded, or in such imminent	1	10	3
Day on which they shall vote for President and Vice President, which shall be the same throughout the United States. Congress may determine the time of choosing the electors, and the	2	1	4
Day to day, and may be authorized to compel the attendance of absent members. A smaller number than a quorum of each House may adjourn from	1	5	1
Death, resignation, or inability of the President, the powers and duties of his office shall devolve on the Vice President. In case of the	2	1	6
[Amendments]	25	------	------
Death, resignation, or inability of the President. Congress may provide by law for the case of the removal	2	1	6
[Amendments]	25	------	------
Debt of the United States, including debts for pensions and bounties incurred in suppressing insurrection or rebellion, shall not be questioned. The validity of the public. [Amendments]	14	4	------
Debts. No State shall make anything but gold and silver coin a tender in payment of	1	10	1
Debts and provide for the common defense and general welfare of the United States. Congress shall have power to pay the	1	8	1
Debts and engagements contracted before the adoption of this Constitution shall be as valid against the United States, under it, as under the Confederation	6	------	1
Debts or obligations incurred in aid of insurrection or rebellion against the United States, or claims for the loss or emancipation of any slave. Neither the United States nor any State shall assume or pay any. [Amendments]	14	4	------

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water. Congress shall have power to	1	8	11
Defense, promote the general welfare, &c. To insure the common. [Preamble]	------	------	------
Defense and general welfare throughout the United States. Congress shall have power to pay the debts and provide for the common	1	8	1
Defense. In all criminal prosecutions the accused shall have the assistance of counsel for his. [Amendments]	6	------	------
Delaware entitled to one Representative in the First Congress	1	2	3
Delay. No State shall, without the consent of Congress, engage in war unless actually invaded, or in such imminent danger as will not admit of	1	10	3
Delegated to the United States, nor prohibited to the States, are reserved to the States or to the people. The powers not. [Amendments]	10	------	------
Deny of disparage others retained by the people. The enumeration in the Constitution of certain rights shall not be construed to. [Amendments]	9	------	------
Departments upon any subject relating to their duties. The President may require the written opinion of the principal officers in each of the executive	2	2	1
Departments. Congress may by law vest the appointment of inferior officers in the heads of	2	2	2
Direct tax shall be laid unless in proportion to the census or enumeration. No capitation or other	1	9	4
Direct taxes and Representatives, how apportioned among the several States	1	2	3
Disability of the President and Vice President. Provisions in case of the	2	1	5
[Amendments]	25	------	------
Disability. No person shall be a Senator or Representative in Congress, or presidential elector, or hold any office, civil or military, under the United States, or any State, who having previously taken an oath as a legislative, executive, or judicial officer of the United States, or of any State, to support the Constitution, afterward engaged in insurrection or rebellion against the United States. [Amendments]	14	3	------
But Congress may, by a vote of two-thirds of each House, remove such. [Amendments]	14	3	------
Disagreement between the two Houses as to the time of adjournment, the President may adjourn them to such time as he may think proper. In case of	2	3	------
Disorderly behavior. Each House may punish its members for	1	5	2
And with the concurrence of two-thirds expel a member	1	5	2
Disparage others retained by the people. The enumeration in the Constitution of certain rights shall not be construed to deny or. [Amendments]	9	------	------

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Disqualification. No Senator or Representative shall, during the time for which he was elected, be appointed to any office under the United States which shall have been created or its emoluments increased during such term	1	------	2
No person holding any office under the United States shall be a member of either House during his continuance in office	1	6	2
No person shall be a member of either House, presidential elector, or hold any office under the United States, or any State, who, having previously sworn to support the Constitution, afterward engaged in insurrection or rebellion. [Amendments]	14	3	------
Disqualification. But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments]	14	3	------
District of Columbia. Congress shall exercise exclusive legislation in all cases over the	1	8	17
Electors for President and Vice-President, appointment by. [Amendments]	23	1	------
Dockyards. Congress shall have exclusive authority over all places purchased for the erection of	1	8	17
Domestic tranquility, provide for the common defense, &c. To insure. [Preamble]	------	------	------
Domestic violence. The United States shall protect each State against invasion and	4	4	------
Due process of law. No person shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property without. [Amendments]	5	------	------
No State shall deprive any person of life, liberty, or property without. [Amendments]	14	1	------
Duties and powers of the office of President, in case of his death, removal or inability to act, shall devolve on the Vice President	2	1	6
[Amendments]	25	------	------
In case of the disability of the President and Vice President, Congress shall declare what officer shall act	2	1	6
[Amendments]	25	------	------
Duties, imposts, and excise. Congress shall have power to lay and collect taxes	1	8	1
Shall be uniform throughout the United States	1	8	1
Duties shall be laid on articles exported from any State. No tax or	1	9	5
Duties in another State. Vessels clearing in the ports of one State shall not be obliged to pay	1	9	6
On imports and exports, without the consent of Congress, except where necessary for executing its inspection laws. No State shall lay any	1	10	2
The net produce of all such duties shall be for the use of the Treasury of the United States	1	10	2
All laws laying such duties shall be subject to the revision and control of Congress	1	10	2
Duty of tonnage without the consent of Congress. No State shall lay any	1	10	3

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
E			
Eighteenth Amendment. Repeal. [Amendments]	21	1	------
Election of President and Vice President. Congress may determine the day for the	2	1	4
Shall be the same throughout the United States. The day of the	2	1	4
Elections. The right of citizens of the United States to vote in shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax. [Amendments]	24	1	------
Elections for Senator and Representatives. The legislatures of the States shall prescribe the times, places, and manner of holding	1	4	1
But Congress may, at any time, alter such regulations, except as to the places of choosing Senators	1	4	1
Returns and qualifications of its own members. Each House shall be the judge of the	1	5	1
Senators elected by the people. [Amendments]	17	1	------
Electors for members of the House of Representatives. Qualifications of	1	2	1
Electors for Senators. Qualifications of. [Amendments]	17	1	------
Electors for President and Vice President. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress	2	1	2
But no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector	2	1	2
Congress may determine the time of choosing the electors and the day on which they shall give their votes	2	1	4
Which day shall be the same throughout the United States	2	1	4
The electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves. [Amendments]	12	------	------
District of Columbia to appoint, in such manner as the Congress may direct, a number of electors equal to the whole number of Senators and Representatives to which the District would be entitled if it were a State. [Amendments]	23	1	------
Electors shall name, in their ballots, the person voted for as President; and in distinct ballots the person voted for as Vice President. [Amendments]	12	------	------
They shall make distinct lists of the persons voted for as President and of persons voted for as Vice President, which they shall sign and certify, and transmit sealed to the seat of government, directed to the President of the Senate. [Amendments]	12	------	------

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
No person having taken an oath as a legislative, executive or judicial officer of the United States, or of any State, and afterwards engaged in insurrection or rebellion against the United States, shall be an elector	14	3	------
But Congress may, by a vote of two-thirds of each House remove such disability. [Amendments]	14	3	------
Emancipation of any slave shall be held to be illegal and void. Claims for the loss or. [Amendments]	14	4	------
Emit bills of credit. No State shall	1	10	1
Emolument of any kind from any king, prince, or foreign state, without the consent of Congress. No person holding any office under the United States shall accept any	1	9	8
Enemies. Treason shall consist in levying war against the United States, in adhering to, or giving aid and comfort to their	------	------	------
Engagements contracted before the adoption of this Constitution shall be valid. All debts and	6	------	1
Enumeration of the inhabitants shall be made within three years after the first meeting of Congress, and within every subsequent term of ten years thereafter	1	2	3
Ratio of representation not to exceed one for every 30,000 until the first enumeration shall be made	1	2	3
Income tax authorized without regard to. [Amendments]	16	------	------
Enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. The. [Amendments]	9	------	------
Equal protection of the laws. No State shall deny to any person within its jurisdiction the. [Amendments]	14	1	------
Equal suffrage in the Senate. No State shall be deprived without its consent, of its	5	------	------
Establishment of this Constitution between the States ratifying the same. The ratification of nine States shall be sufficient for the	7	------	------
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. [Amendments]	8	------	------
Excises. Congress shall have power to lay and collect taxes, duties, imposts, and	1	8	1
Shall be uniform throughout the United States. All duties, imposts, and	1	8	1
Exclusive legislation, in all cases, over such district as may become the seat of government. Congress shall exercise	1	8	17
Over all places purchased for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. Congress shall exercise	1	8	17
Executive of a State. The United States shall protect each State against invasion and domestic violence, on the application of the legislature or the	4	4	------
Executive and judicial officers of the United States and of the several States shall be bound by an oath to support the Constitution	6	-----	3

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Executive departments. On subjects relating to their duties the President may require the written opinions of the principal officers in each of the	2	2	1
Congress may by law vest the appointment of inferior officers in the heads of	2	2	2
Executive power shall by vested in a President of the United States of America. The	2	1	1
Expel a member. Each House, with the concurrence of two-thirds, may	1	5	2
Expenditures of public money shall be published from time to time. A regular statement of the receipts and	1	9	7
Exportations from any State. No tax or duty shall be laid on	1	9	5
Exports or imports, except upon certain conditions. No State shall, without the consent of Congress, lay any duties on	1	10	2
Laid by any State, shall be for the use of the Treasury. The net produce of all duties on	1	10	2
Shall be subject to the revision and control of Congress. All laws of the States laying duties on	1	10	2
Ex post facto law shall be passed. No bill of attainder or	1	9	3
Ex post facto law, or law impairing the obligation of contracts. No State shall pass any bill of attainder	1	10	1
Extraordinary occasions. The President may convene both houses, or either House of Congress, on	2	3	------
F			
Faith and credit in each State shall be given to the acts, records, and judicial proceedings of another State. Full	4	1	------
Felony, and breach of the peace. Members of Congress shall not be privileged from arrest for treason	1	6	1
Felonies committed on the high seas. Congress shall have power to define and punish piracies and	1	8	10
Fines. Excessive fines shall not be imposed. [Amendments]	8	------	------
Foreign coin. Congress shall have power to coin money, fix the standard of weights and measures, and to regulate the value of	1	8	5
Foreign nations, among the States, and with the Indian tribes. Congress shall have power to regulate commerce with	1	8	3
Foreign power. No State shall, without the consent of Congress, enter into any compact or agreement with any	1	10	3
Forfeiture, except during the life of the person attainted. Attainder of treason shall not work	3	3	2
Formation of new States. Provisions relating to the	4	3	1
Form of government. The United States shall guarantee to every State in this Union a republican	4	4	------
And shall protect each of them against invasion; and on application of the legislature or of the executive (when the legislature cannot be convened), against domestic violence	4	4	------

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Forts, magazines, arsenals, dock-yards, and other needful buildings. Congress shall exercise exclusive authority over all places purchased for the erection of	1	8	17
Freedom of speech or the press. Congress shall make no law abridging the. [Amendments]	1	------	------
Free State, the right of the people to keep and bear arms shall not be infringed. A well-regulated militia being necessary to the security of a. [Amendments]	2	------	------
Fugitives from crime found in another State shall, on demand, be delivered up to the authorities of the State from which they may flee	4	2	2
Fugitives from service or labor in one State, escaping into another State, shall be delivered up to the party to whom such service or labor may be due	4	2	3
G			
General welfare and secure the blessings of liberty, &c. To promote the. [Preamble]	------	------	------
General welfare. Congress shall have power to provide for the common defense and	1	8	1
Georgia shall be entitled to three Representatives in the first Congress	1	2	3
Gold and silver coin a tender in payment of debts. No State shall make anything but	1	10	1
Good behavior. The judges of the Supreme and inferior courts shall hold their offices during	3	1	------
Government. The United States shall guarantee to every State in this Union a republican form of	4	4	------
And shall protect each of them against invasion, and on application of the legislature or of the executive (when the legislature cannot be convened), against domestic violence	4	4	------
Grand jury. No person shall be held to answer for a capital or otherwise infamous crime, unless on the presentment of a. [Amendments]	5	------	------
Except in cases arising in the land and naval forces, and in the militia when in actual service. [Amendments]	5	------	------
Guarantee to every State in this Union a republican form of government. The United States shall	4	4	------
And shall protect each of them against invasion; and on application of the legislature or of the executive (when the legislature cannot be convened), against domestic violence	4	4	------
H			
Habeas corpus shall not be suspended unless in cases of rebellion or invasion. The writ of	1	9	2
Heads of departments. Congress may, by law, vest the appointment of inferior officers in the	2	2	2
On any subject relating to their duties, the President may require the written opinion of the principal officer in each of the executive departments	2	2	1

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
High crimes and misdemeanors. The President, Vice President, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other	2	4	------
House of Representatives. Congress shall consist of a Senate and	1	1	------
Shall be composed of members chosen every second year	1	2	1
Qualifications of electors for members of the	1	2	1
No person shall be a member who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States	1	2	2
The executives of the several States shall issue writs of election to fill vacancies in the	1	2	4
Shall choose their Speaker and other officers	1	2	5
Shall have the sole power of impeachment	1	2	5
Shall be the judge of the elections, returns, and qualifications of its own members	1	5	1
A majority shall constitute a quorum to do business	1	5	1
Less than a majority may adjourn from day to day, and compel the attendance of absent members	1	5	1
May determine its own rules of proceedings	1	5	2
May punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member	1	5	2
Shall keep a journal of its proceedings	1	5	3
Shall not adjourn for more than three days during the session of Congress without the consent of the Senate	1	5	4
Members shall not be questioned for any speech or debate in either House or in any other place	1	6	1
No person holding any office under the United States shall, while holding such office, be a member, of the	1	6	2
No person, while a member of either House, shall be appointed to an office which shall have been created or the emoluments increased during his membership	1	6	2
All bills for raising revenue shall originate in the	1	7	1
The votes for President and Vice President shall be counted in the presence of the Senate and. [Amendments]	12	------	------
If no person have a majority of electoral votes, then from the three highest on the list the House of Representatives shall immediately, by ballot, choose a President. [Amendments]	12	------	------
They shall vote by States, each State counting one vote. [Amendments]	12	------	------
A quorum shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to the choice of a President. [Amendments]	12	------	------
No person having as a legislative, executive, or judicial officer of the United States, or of any State, taken an oath to support the Constitution, and afterwards engaged in insurrection or rebellion against the United States, shall be a member of the. [Amendments]	14	3	------

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments]	14	3	------
I			
Imminent danger as will not admit of delay. No State shall, without the consent of Congress, engage in war, unless actually invaded or in such	1	10	3
Immunities. Members of Congress shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going and returning from the same	1	6	1
No soldier shall be quartered in any house without the consent of the owner in time of peace. [Amendments]	3	------	------
Immunities. No person shall be twice put in jeopardy of life and limb for the same offense. [Amendments]	5	------	------
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. [Amendments]	14	1	------
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. [Amendments]	14	1	------
Nor shall any State deprive any person of life, liberty, or property without due process of law. [Amendments]	14	1	------
Nor deny to any person within its jurisdiction the equal protection of the law. [Amendments]	14	1	------
Impeachment. The President may grant reprieves and pardons except in cases of	2	2	1
The House of Representatives shall have the sole power of	1	2	5
Impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors. The President, Vice-President, and all civil officers shall be removed upon	2	4	------
Impeachments. The Senate shall have the sole power to try all	1	3	6
The Senate shall be on oath, or affirmation, when sitting for the trial of	1	3	6
When the President of the United States is tried the Chief Justice shall preside	1	3	6
No person shall be convicted without the concurrence of two-thirds of the members present	1	3	6
Judgment shall not extend beyond removal from office and disqualification to hold office	1	3	7
But the party convicted shall be liable to indictment and punishment according to law	1	3	7
Importation of slaves prior to 1808 shall not be prohibited by the Congress	1	9	1
But a tax or duty of ten dollars for each person may be imposed on such	1	9	1

[1] **Article of original Constitution or of amendment.**

	Article [1]	Section	Clause
Imports or exports except what may be absolutely necessary for executing its inspection laws. No State shall, without the consent of Congress, lay any imposts or duties on	1	10	2
Imports or exports laid by any State shall be for the use of the Treasury. The net produce of all duties on	1	10	2
Imports or exports shall be subject to the revision and control of Congress. All laws of States laying duties on	1	10	2
Imposts and excises. Congress shall have power to lay and collect taxes, duties	1	8	1
Shall be uniform throughout the United States. All taxes, duties	1	8	1
Inability of the President, the powers and duties of his office shall devolve on the Vice President. In case of the death, resignation, or	2	1	6
[Amendments]	25	------	------
Inability of the President or Vice President. Congress may provide by law for the case of the removal, death, resignation, or	2	1	6
[Amendments]	25	------	------
Income taxes. Congress shall have power to lay and collect without apportionment among the several States, and without regard to any census or enumeration. [Amendments]	16	------	------
Indian tribes. Congress shall have power to regulate commerce with the	1	8	3
Indictment or presentment of a grand jury. No person shall be held to answer for a capital or infamous crime unless on. [Amendments]	5	------	------
Except in cases arising in the land and naval forces, and in the militia when in actual service. [Amendments]	5	------	------
Indictment, trial, judgment, and punishment, according to law. The party convicted in case of impeachment shall nevertheless be liable and subject to	1	3	7
Infamous crime unless on presentment or indictment of a grand jury. No person shall be held to answer for a capital or. [Amendments]	5	------	------
Inferior courts. Congress shall have power to constitute tribunals inferior to the Supreme Court	1	8	9
Inferior courts as Congress may establish. The judicial power of the United States shall be vested in one Supreme Court and such	3	1	------
The judges of both the Supreme and inferior courts shall hold their offices during good behavior	3	1	------
Their compensation shall not be diminished during their continuance in office	3	1	------
Inferior officers in the courts of law, in the President alone, or in the heads of Departments. Congress, if they think proper, may by law vest the appointment of	2	2	2
Inhabitant of the State for which he shall be chosen. No person shall be a Senator who shall not have attained the age of thirty years, been nine years a citizen of the United States, and who shall not, when elected, be an	1	3	3

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Insurrection or rebellion against the United States. No person shall be a Senator or Representative in Congress, or presidential elector, or hold any office, civil or military, under the United States, or any State, who having taken an oath as a legislative, executive, or judicial officer of the United States, or of a State, afterwards engaged in. [Amendments]	14	3	------
But Congress may, by a vote of two-thirds of each House, remove such disabilities. [Amendments]	14	3	------
Debts declared illegal and void which were contracted in aid of. [Amendments]	14	4	------
Insurrections and repel invasions. Congress shall provide for calling forth the militia to suppress	1	8	15
Intoxicating liquors. Prohibition of manufacture, sale and transportation. [Amendments]	21	------	------
Repeal of Eighteenth Amendment. [Amendments]	21	1	------
Transportation in States prohibiting use therein prohibited. [Amendments]	21	2	------
Invasion. No State shall, without the consent of Congress engage in war unless actually invaded, or in such imminent danger as will not admit of delay	1	10	3
Invasion. The writ of habeas corpus shall not be suspending unless in case of rebellion or	1	9	2
Invasion and domestic violence. The United States shall protect each State against	4	4	------
Invasions. Congress shall provide for calling forth the militia to suppress insurrections and repel	1	8	15
Inventors and authors in their inventions and writings. Congress may pass laws to secure for limited times exclusive rights to	1	8	8
Involuntary servitude, except as a punishment for crime, abolished in the United States. Slavery and. [Amendments]	13	1	------
J			
Jeopardy of life and limb for the same offense. No person shall be twice put in. [Amendments]	5	------	------
Journal of its proceedings. Each House shall keep a	1	5	3
Judges in every State shall be bound by the Constitution, the laws and treaties of the United States, which shall be the supreme law of the land	6	------	2
Judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	------
Their compensation shall not be diminished during their continuance in office	3	1	------
Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit under the United States	1	3	7
But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law	1	3	7
Judicial power of the United States. Congress shall have power to constitute tribunals inferior to the Supreme Court	1	8	9

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish	3	1	------
The judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	------
Their compensation shall not be diminished during their continuance in office	3	1	------
It shall extend to all cases in law and equity arising under the Constitution, laws, and treaties of the United States	3	2	1
To all cases affecting ambassadors, other public ministers, and consuls	3	2	1
To all cases of admiralty and maritime jurisdiction	3	2	1
To controversies to which the United States shall be a party	3	2	1
To controversies between two or more States	3	2	1
To controversies between a State and citizens of another State	3	2	[2] 1
To controversies between citizens of different States	3	2	1
To citizens of the same State claiming lands under grants of different States	3	2	1
To controversies between a State or its citizens and foreign states, citizens, or subjects	3	2	1
In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction	3	2	2
In all other cases before mentioned, it shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make	3	2	2
The trial of all crimes, except in cases of impeachment, shall be by jury	3	2	3
The trial shall be held in the State where the crimes shall have been committed	3	2	3
But when not committed in a State, the trial shall be at such place or places as Congress may by law have directed	3	2	3
The judicial power of the United States shall not be held to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State. [Amendments]	11	------	------
Judicial proceedings of every other State. Full faith and credit shall be given in each State to the acts, records, and	4	1	------
Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	------
Judicial and executive officers of the United States and of the several States shall be bound by an oath to support the Constitution	6	------	3

[1] Article of original Constitution or of amendment.
[2] See also the eleventh amendment.

	Article [1]	Section	Clause
Judiciary. The Supreme Court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a State may be a party	3	2	2
The Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and regulations as Congress may make	3	2	2
Junction of two or more States or parts of States without the consent of the legislatures and of Congress. No State shall be formed by the	4	3	1
Jurisdiction of another State. No new State shall, without the consent of Congress, be formed or erected within the	4	3	1
Jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress may make. The Supreme Court shall have appellate	3	2	2
Jurisdiction. In all cases affecting ambassadors and other public ministers and consuls, and in cases where a State is a party, the Supreme Court shall have original	3	2	2
Jury. The trial of all crimes, except in cases of impeachment, shall be by	3	2	3
In all criminal prosecutions the accused shall have a speedy and public trial by. [Amendments]	6	------	------
All suits at common law, where the value exceeds twenty dollars, shall be tried by. [Amendments]	7	------	------
Where a fact has been tried by a jury it shall not be reexamined except by the rules of the common law. [Amendments]	7	------	------
Just compensation. Private property shall not be taken for public use without. [Amendments]	5	------	------
Justice, insure domestic tranquility, &c. To establish. [Preamble]	------	------	------
L			
Labor, in one State escaping into another State shall be delivered up to the party to whom such service or labor may be due. Fugitives from service or	4	2	3
Land and naval forces. Congress shall make rules for the government and regulation of the	1	8	14
Law and fact, with exceptions and under regulations to be made by Congress. The Supreme Court shall have appellate jurisdiction as to	3	2	2
Law of the land. The Constitution, the laws made in pursuance thereof, and treaties of the United States, shall be the supreme	6	------	2
The Judges in every State shall be bound thereby	6	------	2
Law of nations. Congress shall provide for punishing offenses against the	1	8	10
Laws. Congress shall provide for calling forth the militia to supress insurrection, repel invasion, and to execute the	1	8	15
Laws and treaties of the United States. The judicial power shall extend to all cases in law and equity arising under the Constitution, or the	3	2	1

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Laws necessary to carry into execution the powers vested in the government, or in any department or officer of the United States. Congress shall make all	1	8	18
Legal tender in payment of debts. No State shall make anything but gold and silver coin a	1	10	1
Legislation in all cases over such district as may become the seat of government. Congress shall exercise exclusive	1	8	17
Over all places purchased for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. Congress shall exercise exclusive	1	8	17
Legislation. Congress shall have power to make all laws necessary and proper for carrying into execution all the powers vested by the Constitution in the Government of the United States or in any department or officer thereof	1	8	18
Legislation. Congress shall have power to enforce article xiii, prohibiting slavery, by appropriate. [Amendments]	13	2	------
Congress shall have power to enforce the fourteenth amendment by appropriate. [Amendments]	14	5	------
Congress shall have power to enforce the fiftheenth amendment by appropriate. [Amendments]	15	2	------
Legislative powers herein granted shall be vested in Congress. All	1	1	------
Legislature, or the Executive (when the legislature cannot be convened). The United States shall protect each State against invasion and domestic violence, on the application of the	4	4	------
Legislatures of two-thirds of the States, Congress shall call a convention for proposing amendments to the Constitution. On the application of the	5	------	------
Letters of marque and reprisal. Congress shall have power to grant	1	8	11
No State shall grant	1	10	1
Liberty to ourselves and our posterity, &c. To secure the blessings of. [Preamble]	------	------	------
Life, liberty, and property without due process of law. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of. [Amendments]	5	------	------
No State shall abridge the privileges or immunities of citizens of the United States, nor deprive any person of. [Amendments]	14	1	------
Life or limb for the same offense. No person shall be twice put in jeopardy of. [Amendments]	5	------	------
Loss or emancipation of any slave shall be held illegal and void. Claims for the. [Amendments]	14	4	------
M			
Magazines, arsenals, dock-yards, and other needful buildings. Congress shall have exclusive authority over all places purchased for the erection of	1	8	17

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
Majority of each House shall consititute a quorum to do business. A	1	5	1
But a smaller number may adjourn from day to day and may be authorized to compel the attendance of absent members	1	5	1
Majority of all the States shall be necessary to a choice. When the choice of a President shall devolve on the House of Representatives, a quorum shall consist of a member or members from two-thirds of the States; but a. [Amendments]	12	------	------
When the choice of a Vice President shall devolve on the Senate, a quorum shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. [Amendments]	12	------	------
Maritime jurisdiction. The judicial power shall extend to all cases of admiralty and	3	2	1
Marque and reprisal. Congress shall have power to grant letters of	1	8	11
No State shall grant any letters of	1	10	1
Maryland entitled to six Representatives in the first Congress	1	2	3
Massachusetts entitled to eight Representatives in the first Congress	1	2	3
Measures. Congress shall fix the standard of weights and	1	8	5
Meeting of Congress. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day	1	4	2
Meeting of electors. District of Columbia, electors for President and Vice-President appointed by District. [Amendments]	23	1	------
Members of Congress and of State legislatures shall be bound by oath or affirmation to support the Constitution	6	------	3
Militia to execute the laws, suppress insurrections, and repel invasions. Congress shall provide for calling forth the	1	8	15
Congress shall provide for organizing, arming, and disciplining the	1	8	16
Militia to execute the laws, suppress insurrections, and repel invasions. Congress shall provide for governing such part of them as may be employed by the United States	1	8	16
Reserving to the States the appointment of the officers and the right to train the militia according to the discipline prescribed by Congress	1	8	16
A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. [Amendments]	2	------	------
Misdemeanors. The President, Vice President, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other high crimes and	2	4	------

[1] **Article of original Constitution or of amendment.**

	Article [1]	Section	Clause
Money on the credit of the United States. Congress shall have the power to borrow	1	8	2
Regulate the value thereof and of foreign coin. Congress shall have power to coin	1	8	5
Shall be drawn from the Treasury but in consequence of appropriations made by law. No	1	9	7
Shall be published from time to time. A regular statement and account of receipts and expenditures of public	1	9	7
For raising and supporting armies. No appropriation of money shall be for a longer term than two years	1	8	12
N			
Nations. Congress shall have power to regulate commerce with foreign	1	8	3
Congress shall provide for punishing offenses against the law of	1	8	10
Natural-born citizen, or a citizen at the adoption of the Constitution, shall be eligible to the office of President. No person except a	2	1	5
Naturalization. Congress shall have power to establish a uniform rule of	1	8	4
Naturalized in the United States, and subject to their jurisdiction, shall be citizens of the United States and of the States in which they reside. All persons born, or. [Amendments]	14	1	------
Naval forces. Congress shall make rules and regulations for the government and regulation of the land and	1	8	14
Navy. Congress shall have power to provide and maintain a	1	8	13
New Hampshire entitled to three Representatives in the first Congress	1	2	3
New Jersey entitled to four Representatives in the first Congress	1	2	3
New States may be admitted by Congress into this Union	4	3	1
But no new State shall be formed within the jurisdiction of another State without the consent of Congress	4	3	1
Nor shall any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures and of Congress	4	3	1
New York entitled to six Representatives in the first Congress	1	2	3
Nobility shall be granted by the United States. No title of	1	9	8
No State shall grant any title of	1	10	1
Nominations for office by the President. The President shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors and other public officers	2	2	2
He may grant commissions to fill vacancies that happen in the recess of the Senate, which shall expire at the end of their next session	2	2	3

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
North Carolina entitled to five Representatives in the first Congress	1	2	3
Number of electors for President and Vice-President in each State shall be equal to the number of Senators and Representatives to which such State may be entitled in Congress	2	1	2
O			
Oath of office of the President of the United States. Form of the	2	1	8
Oath or affirmation. No warrants shall be issued but upon probable cause supported by. [Amendments]	4	------	------
Oath or affirmation to support the Constitution. Senators and Representatives, members of State legislatures, executive and judicial officers of the United States and of the several States, shall be bound by	6	------	3
But no religious test shall ever be required as a qualification for office	6	------	3
The Senators when sitting to try impeachment shall be on	1	3	6
Objections. If he shall not approve it, the President shall return the bill to the House in which it originated with his	1	7	2
Obligation of contracts. No State shall pass any ex post facto law, or law impairing the	1	10	1
Obligations incurred in aid of insurrection or rebellion against the United States to be held illegal and void. All debts or. [Amendments]	14	4	------
Offense. No person shall be twice put in jeopardy of life or limb for the same. [Amendments]	5	------	------
Offenses against the law of nations. Congress shall provide for punishing	1	8	10
Against the United States, except in cases of impeachment. The President may grant reprieves or pardons for	2	2	1
Office under the United States. No person shall be a member of either House while holding any civil	1	6	2
No Senator or Representative shall be appointed to any office under the United States which shall have been created, or its emoluments increased, during the term for which he is elected	1	6	2
Or title of any kind from any king, prince, or foreign State, without the consent of Congress. No person holding any office under the United States shall accept of any present, emolument	1	9	8
Office of President, in case of his removal, death, resignation, or inability, shall devolve on the Vice President. The powers and duties of the	2	1	6
[Amendments]	25	------	------
During the term of four years. The President and Vice President shall hold	2	1	1

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Office of President—Continued			
Of trust or profit under the United States shall be an elector for President and Vice President. No person holding an	2	1	2
Civil or military under the United States, or any State, who had taken an oath as a legislative, executive, or judicial officer of the United States, or of any State, and afterward engaged in insurrection or rebellion. No person shall be a Senator, Representative, or Presidential elector, or hold any. [Amendments]	14	3	------
Officers in the President alone, in the courts of law, or in the heads of Departments. Congress may vest the appointment of inferior	2	2	2
Of the United States shall be removed on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. The President, Vice President, and all civil	2	4	------
The House of Representatives shall choose their Speaker and other	1	2	5
The Senate, in the absence of the Vice President, shall choose a President pro tempore, and also their other	1	3	5
Offices becoming vacant in the recess of the Senate may be filled by the President, the commissions to expire at the end of the next session	2	2	3
One-fifth of the members present, be entered on the journal of each House. The yeas and nays shall, at the desire of	1	5	3
Opinion of the principal officers in each of the Executive Departments on any subject relating to their duties. The President may require the written	2	2	1
Order, resolution, or vote (except on a question of adjournment) requiring the concurrence of the two Houses, shall be presented to the President. Every	1	7	3
Original jurisdiction, in all cases affecting ambassadors, other public ministers, and consuls, and in which a State may be a party. The Supreme Court shall have	3	2	2
Overt act, or on confession in open court. Conviction of treason shall be on the testimony of two witnesses to the	3	3	1
P			
Pardons, except in cases of impeachment. The President may grant reprieves and	------	2	1
Patent rights to inventors. Congress may pass laws for securing	1	8	8
Peace. Members of Congress shall not be privileged from arrest for treason, felony, and breach of the	1	6	1
No State shall, without the consent of Congress, keep troops or ships of war in time of	1	10	3
No soldier shall be quartered in any house without the consent of the owner in time of. [Amendments]	3	------	------

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
Pensions and bounties shall not be questioned. The validity of the public debt incurred in suppressing insurrection and rebellion against the United States, including the debt for. [Amendments]	14	4	------
Pennsylvania entitled to eight Representatives in the first Congress	1	2	3
People, peaceably to assemble and petition for redress of grievances, shall not be abridged by Congress. The right of the. [Amendments]	1	------	------
To keep and bear arms shall not be infringed. A well-regulated militia being necessary to the security of a free State, the right of the. [Amendments]	2	------	------
To be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated. The right of the. [Amendments]	4	------	------
People. The enumeration of certain rights in the Constitution shall not be held to deny or disparage others retained by the. [Amendments]	9	------	------
People. Powers not delegated to the United States, nor prohibited to the States, are reserved to the States or to the. [Amendments]	10	------	------
Perfect Union, &c. To establish a more. [Preamble]	------	------	------
Persons, houses, papers, and effects against unreasonable searches and seizures. The people shall be secure in their. [Amendments]	4	------	------
Persons, as any State may think proper to admit, shall not be prohibited prior to 1808. The migration or importation of such	1	9	1
But a tax or duty of ten dollars shall be imposed on the importation of each of such	1	9	1
Petition for the redress of grievances. Congress shall make no law abridging the right of the people peaceably to assemble and to. [Amendments]	1	------	------
Piracies and felonies committed on the high seas. Congress shall define and punish	1	8	10
Place than that in which the two Houses shall be sitting. Neither House during the session shall, without the consent of the other, adjourn for more than three days, nor to any other	1	5	4
Places of choosing Senators. Congress may by law make or alter regulations for the election of Senators and Representatives, except as to the	1	4	1
Poll tax. The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State by reason of failure to pay. [Amendments]	24	1	------
Ports of one State over those of another. Preference shall not be given by any regulation of commerce or revenue to the	1	9	6
Vessels clearing from the ports of one State shall not pay duties in another	1	9	6
Post offices and post roads. Congress shall establish	1	8	7
Powers herein granted shall be vested in Congress. All legislative	1	1	------

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
Powers vested by the Constitution in the Government or in any Department or officer of the United States. Congress shall make all laws necessary to carry into execution the	1	8	18
Powers and duties of the office shall devolve on the Vice President, on the removal, death, resignation, or inability of the President. The	2	1	6
[Amendments]	25	------	------
Powers not delegated to the United States nor prohibited to the States are reserved to the States and to the people. [Amendments]	10	------	------
The enumeration of certain rights in this Constitution shall not be held to deny or disparage others retained by the people. [Amendments]	9	------	------
Preference, by any regulation of commerce or revenue, shall not be given to the ports of one State over those of another	1	9	6
Prejudice any claims of the United States or of any particular State in the territory or property of the United States. Nothing in this Constitution shall	4	3	2
Present, emolument, office, or title of any kind whatever from any king, prince, or foreign State. No person holding any office under the United States shall, without the consent of Congress, accept any	1	9	8
Presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service. No person shall be held to answer for a capital or otherwise infamous crime unless on a. [Amendments]	5	------	------
President of the United States. The Senate shall choose a President pro tempore when the Vice President shall exercise the office of	1	3	5
Additional provision for succession through act of Congress. [Amendments]	20	4	------
Succession in case of death. [Amendments]	20	3	------
Succession in case of failure to be chosen or qualified. [Amendments]	20	3	------
Term of office, beginning and ending. [Amendments]	20	1	------
The Chief Justice shall preside upon the trial of the	1	3	6
Shall approve and sign all bills passed by Congress before they shall become laws	1	7	2
Shall return to the House in which it originated, with his objections, any bill which he shall not approve	1	7	2
If not returned within ten days (Sundays excepted), it shall become a law, unless Congress shall adjourn before the expiration of that time	1	7	2
Every order, resolution, or vote which requires the concurrence of both Houses, except on a question of adjournment, shall be presented to the	1	7	3
If disapproved by him, shall be returned and proceeded on as in the case of a bill	1	7	3
The executive power shall be vested in a	2	1	1
He shall hold his office during the term of four years	2	1	1

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
President of the United States—Continued			
In case of the removal of the President from office, or of his death, resignation, or inability to discharge the duties of his office, the Vice President shall perform the duties of	2	1	6
[Amendments]	25	------	------
Congress may declare, by law, in the case of the removal, death, resignation, or inability of the President, what officer shall act as	2	1	6
[Amendments]	25	------	------
The President shall receive a compensation which shall not be increased nor diminished during his term, not shall he receive any other emolument from the United States	2	1	7
Before he enters upon the execution of his office he shall take an oath of office	2	1	8
Shall be commander in chief of the Army and Navy and of the militia of the States when called into actual service	2	2	1
He may require the opinion, in writing, of the principal officer in each of the Executive Departments	2	2	1
He may grant reprieves or pardons for offenses, except in cases of impeachment	2	2	1
He may make treaties by and with the advice and consent of the Senate, two-thirds of the Senators present concurring	2	2	2
He may appoint, by and with the advice and consent of the Senate, ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers whose appointments may be authorized by law and not herein provided for	2	2	2
Congress may vest the appointment of inferior officers in the	2	2	2
He may fill up all vacancies that may happen in the recess of the Senate by commissions which shall expire at the end of their next session	2	2	3
He shall give information to Congress of the state of the Union, and recommend measures	2	3	------
On extraordinary occasions he may convene both Houses or either	2	3	------
In case of disagreement between the two Houses as to the time of adjournment, he may adjourn them to such time as he may think proper	2	3	------
He shall receive ambassadors and other public ministers	2	3	------
He shall take care that the laws be faithfully executed	2	3	------
He shall commission all the officers of the United States	2	3	------
On impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors, shall be removed from office. The	2	4	------
No person except a natural-born citizen, or a citizen of the United States at the adoption of the Constitution, shall be eligible to the office of	2	1	5

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
No person shall be elected to office more than twice. [Amendments]	22		
No person who shall not have attained the age of thirty-five years and been fourteen years a resident of the United States shall be eligible to the office of	2	1	5
President and Vice President. Manner of choosing. Each State by its legislature, shall appoint a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress	2	1	2
No Senator or Representative or person holding an office of trust or profit under the United States shall be an elector	2	1	2
Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States	2	1	4
The electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves. [Amendments]	12		
They shall name in distinct ballots the person voted for as President and the person voted for as Vice President. [Amendments]	12		
They shall make distinct lists of the persons voted for as President and as Vice President, which they shall sign and certify and transmit sealed to the President of the Senate at the seat of government. [Amendments]	12		
The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. [Amendments]	12		
The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed. [Amendments]	12		
If no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. [Amendments]	12		
In choosing the President, the votes shall be taken by States, the representation from each State having one vote. [Amendments]	12		
A quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. [Amendments]	12		
But if no choice shall be made before the 4th of March next following, then the Vice President shall act as President, as in the case of the death or disability of the President. [Amendments]	12		

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
President and Vice President—Continued			
District of Columbia shall appoint a number of electors equal to the whole number of Senators and Representatives in Congress which the District would be entitled to if it were a State. [Amendments]	23	1	------
President of the Senate, but shall have no vote unless the Senate be equally divided. The Vice President shall be	1	3	4
President pro tempore. In the absence of the Vice President the Senate shall choose a	1	3	5
When the Vice President shall exercise the office of President of the United States, the Senate shall choose a	1	3	5
Press. Congress shall pass no law abridging the freedom of speech or of the. [Amendments]	1	------	------
Previous condition of servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State on account of race, color, or. [Amendments]	15	1	------
Primary elections. The right of citizens of the United State to vote in shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax. [Amendments]	24	1	------
Private property shall not be taken for public use without just compensation. [Amendments]	5	------	------
Privilege. Senators and Representatives shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same	1	6	1
They shall not be questioned for any speech or debate in either House in any other place	1	6	1
Privileges and immunities of citizens of the United States. The citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States	4	2	1
No soldier shall be quartered in any house without the consent of the owner in time of peace. [Amendments]	3	------	------
No person shall be twice put in jeopardy of life and limb for the same offense. [Amendments]	5	------	------
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. [Amendments]	14	1	------
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. [Amendments]	14	1	------
No State shall deprive any person of life, liberty, or property without due process of law. [Amendments]	14	1	------
Nor deny to any person within its jurisdiction the equal protection of its laws. [Amendments]	14	1	------

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Prizes captured on land or water. Congress shall make rules concerning	1	8	11
Probable cause. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. And no warrant shall issue for such but upon. [Amendments]	4		
Process of law. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due. [Amendments]	5		
No State shall deprive any person of life, liberty, or property, without due. [Amendments]	14	1	
Process for obtaining witnesses in his favor. In all criminal prosecutions the accused shall have. [Amendments]	6		
Progress of science and useful arts. Congress shall have power to promote the	1	8	8
Property of the United States. Congress may dispose of and make all needful rules and regulations respecting the territory or	4	3	2
Property, without due process of law. No person shall be compelled in any criminal case to be a witness against himself; nor shall he be deprived of his life, liberty, or. [Amendments]	5		
No State shall abridge the privileges or immunities of citizens of the United States; nor deprive any person of his life, liberty, or. [Amendments]	14	1	
Prosecutions. The accused shall have a speedy and public trial in all criminal. [Amendments]	6		
He shall be tried by a jury in the State or district where the crime was committed. [Amendments]	6		
He shall be informed of the nature and cause of the accusation. [Amendments]	6		
He shall be confronted with the witnesses against him. [Amendments]	6		
He shall have compulsory process for obtaining witnesses. [Amendments]	6		
He shall have counsel for his defense. [Amendments]	6		
Protection of the laws. No State shall deny to any person within its jurisdiction the equal. [Amendments]	14	1	
Public debt of the United States incurred in suppressing insurrection or rebellion shall not be questioned. The validity of the. [Amendments]	14	4	
Public safety may require it. The writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the	1	9	2
Public trial by jury. In all criminal prosecutions the accused shall have a speedy and. [Amendments]	6		
Public use. Private property shall not be taken for, without just compensation. [Amendments]	5		
Punishment according to law. Judgment in cases of impeachment shall not extend further than to removal from, and disqualification for, office; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and	1	3	7

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
Punishments inflicted. Excessive bail shall not be required nor excessive fines imposed nor cruel and unusual. [Amendments]	8	------	------
Q			
Qualification for office. No religious test shall ever be required as a	6	------	3
Qualifications of electors of members of the House of Representatives shall be the same as electors for the most numerous branch of the State legislature	1	2	1
Qualifications of electors of Senators shall be the same as electors of the most numerous branch of the State legislature. [Amendments]	17	1	------
Qualifications of members of the House of Representatives. They shall be twenty-five years of age, seven years a citizen of the United States, and an inhabitant of the State in which chosen	1	2	2
Of Senators. They shall be thirty years of age, nine years a citizen of the United States, and an inhabitant of the State in which chosen	1	3	3
Of its own members. Each House shall be the judge of the election, returns, and	1	5	1
Of the President. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of the Constitution, shall be eligible to the office of President	2	1	5
Neither shall any person be eligible to the office of President who shall not have attained the age of thirty-five years and been fourteen years a resident within the United States	2	1	5
Of the Vice President. No person constitutionally ineligible to the office of President shall be eligible to that of Vice President. [Amendments]	12	------	------
Quartered in any house without the consent of the owner in time of peace. No soldier shall be. [Amendments]	3	------	------
Quorum to do business. A majority of each House shall constitute a	1	5	1
But a smaller number than a quorum may adjourn from day to day and may be authorized to compel the attendance of absent members	1	5	1
Of the House of Representatives for choosing a President shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. [Amendments]	12	------	------
Quorum to elect a Vice President by the Senate. Two-thirds of the whole number of Senators shall be a. [Amendments]	12	------	------
A majority of the whole number shall be necessary to a choice. [Amendments]	12	------	------

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
R			
Race, color, or previous condition of servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of. [Amendments]	15	1	------
Ratification of amendments to the Constitution shall be by the legislatures of three-fourths of the several States or by conventions in three-fourths of the States, accordingly as Congress may propose	5	------	------
Ratification of the conventions of nine States shall be sufficient to establish the Constitution between the States so ratifying the same	7	------	------
Ratio of representation until the first enumeration under the Constitution shall be made not to exceed one for every thirty thousand	1	2	3
Ratio of representation shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. [Amendments]	14	2	------
But when the right to vote for Presidential electors or members of Congress, or the legislative, executive, and judicial officers of the State, except for engaging in rebellion or other crime, shall be denied or abridged by a State, the basis of representation shall be reduced therein in the proportion of such denial or abridgement of the right to vote. [Amendments]	14	2	------
Rebellion against the United States. Persons who, while holding certain Federal and State offices, took an oath to support the Constitution, afterward engaged in insurrection or rebellion, disabled from holding office under the United States. [Amendments]	14	3	------
But Congress may by a vote of two-thirds of each House remove such disability. [Amendments]	14	3	------
Rebellion against the United States. Debts incurred for pensions and bounties for services in suppressing the rebellion shall not be questioned. [Amendments]	14	4	------
All debts and obligations incurred in aid of the rebellion, and all claims for the loss or emancipation of slaves, declared and held to be illegal and void. [Amendments]	14	4	------
Rebellion or invasion. The writ of habeas corpus shall not be suspended except when the public safety may require it in cases of	1	9	2
Receipts and expenditures of all public money shall be published from time to time. A regular statement of	1	9	7
Recess of the Senate. The President may grant commissions, which shall expire at the end of the next session, to fill vacancies that may happen during the	2	2	3
Reconsideration of a bill returned by the President with his objections. Proceedings to be had upon the	1	7	2

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Records, and judicial proceedings of every other State. Full faith and credit shall be given in each State to the acts	4	1	------
Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	------
Redress of grievances. Congress shall make no law abridging the right of the people peaceably to assemble and to petitions for the. [Amendments]	1	------	------
Regulations, except as to the places of choosing Senators. The time, places, and manner of holding elections for Senators and Representatives shall be prescribed by the legislatures of the States, but Congress may at any time by law make or alter such	1	4	1
Regulations of commerce or revenue. Preference to the ports of one State over those of another shall not be given by any	1	9	6
Religion or prohibiting the free exercise thereof. Congress shall make no law respecting the establishment of. [Amendments]	1	------	------
Religious tests shall ever be required as a qualification for any office or public trust under the United States. No	6	------	3
Removal of the President from office, the same shall devolve on the Vice President. In case of the	2	1	6
[Amendments]	25	------	------
Representation. No State, without its consent, shall be deprived of its equal suffrage in the Senate	5	------	------
Representation and direct taxation, how apportioned among the several States	1	2	3
Representation until the first enumeration under the Constitution not to exceed one for every thirty thousand. The ratio of	1	2	3
Representation in any State. The executive thereof shall issue writs of election to fill vacancies in the	1	2	4
Representation among the several States shall be according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. The ratio of. [Amendments]	14	2	------
But where the right to vote in certain Federal and State elections is abridged for any cause other than rebellion or other crime, the basis of representation shall be reduced. [Amendments]	14	2	------
Representatives. Congress shall consist of a Senate and House of	1	1	------
Qualifications of electors of members of the House of	1	2	1
No person shall be a Representative who shall not have attained the age of twenty-five years, been seven years a citizen of the United States, and an inhabitant of the State in which he shall be chosen	1	2	2
And direct taxes, how apportioned among the several States	1	2	3
Shall choose their Speaker and other officers. The House of	1	2	5
Shall have the sole power of impeachment. The House of	1	2	5

[1] Article of original Constitution or oı amendment.

	Article [1]	Section	Clause
Executives of the States shall issue writs of election to fill vacancies in the House of	1	2	4
The times, places, and manner of choosing Representatives shall be prescribed by the legislatures of the States	1	4	1
But Congress may make by law at any time or alter such regulations except as to the places of choosing Senators	1	4	1
And Senators shall receive a compensation, to be ascertained by law	1	6	1
Shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during attendance at the session of the House, and in going to and returning from the same	1	6	1
Shall not be questioned in any other place for any speech or debate. Members of the House of	1	6	1
No member shall be appointed during his term to any civil office which shall have been created, or the emoluments of which shall have been increased, during such term	1	6	2
No person holding any office under the United States shall, while holding such office be a member of the House of	1	6	2
All bills for raising revenue shall originate in the House of	1	7	1
No Senator or Representative shall be an elector for President or Vice President	2	1	2
Representatives shall be bound by an oath or affirmation to support the Constitution of the United States. The Senators and	6	------	3
Representatives among the several States. Provisions relative to the apportionment of. [Amendments]	14	2	------
Representatives and Senators. Prescribing certain disqualifications for office as. [Amendments]	14	3	------
But Congress may, by a vote of two-thirds of each House remove such disqualification. [Amendments]	14	3	------
Reprieves and pardons except in cases of impeachment. The President may grant	2	2	1
Reprisal. Congress shall have power to grant letters of marque and	1	8	11
No State shall grant any letters of marque and	1	10	1
Republican form of government. The United States shall guarantee to every State in this Union a	4	4	------
Republican form of government. And shall protect each of them against invasion; and on the application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence	4	4	------
Reserved rights of the States and the people. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. [Amendments]	9	------	------
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. [Amendments]	10	------	------

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Resignation, or inability of the President, the duties and powers of his office shall devolve on the Vice President. In case of the death	2	1	6
[Amendments]	25		
Resignation, or inability of the President. Congress may by law provide for the case of the removal, death	2	1	6
[Amendments]	25		
Resolution, or vote (except on a question of adjournment) requiring the concurrence of the two Houses shall before it becomes a law, be presented to the President. Every order	1	7	3
Revenue shall originate in the House of Representatives. All bills for raising	1	7	1
Revenue. Preference shall not be given to the ports of one State over those of another by any regulations of commerce or	1	9	6
Rhode Island entitled to one Representative in the first Congress	1	2	3
Right of petition. Congress shall make no law abridging the right of the people peaceably to assemble and to petition for the redress of grievances. [Amendments]	1		
Right to keep and bear arms. A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. [Amendments]	2		
Rights in the Constitution shall not be construed to deny or disparage others retained by the people. The enumeration of certain. [Amendments]	9		
Rights not delegated to the United States nor prohibited to the States are reserved to the States or to the people. [Amendments]	10		
Rules of its proceedings. Each House may determine the	1	5	2
Rules and regulations respecting the territory or other property of the United States. Congress shall dispose of and make all needful	4	3	2
Rules of the common law. All suits involving over twenty dollars shall be tried by jury according to the. [Amendments]	7		
No fact tried by a jury shall be re-examined except according to the. [Amendments]	7		
S			
Science and the useful arts by securing to authors and inventors the exclusive right to their writings and discoveries. Congress shall have power to promote the progress of	1	8	8
Searches and seizures shall not be violated. The right of the people to be secure against unreasonable. [Amendments]	4		
And no warrants shall be issued but upon probable causes, on oath or affirmation, describing the place to be searched and the persons or things to be seized. [Amendments]	4		

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Seat of Government. Congress shall exercise exclusive legislation in all cases over such district as may become the	1	8	17
Securities and current coin of the United States. Congress shall provide for punishing the counterfeiting of the	1	8	6
Security of a free State, the right of the people to keep and bear arms shall not be infringed. A well-regulated militia being necessary to the. [Amendments]	2	------	------
Senate and House of Representatives. The Congress of the United States shall consist of a	1	1	------
Senate of the United States. The Senate shall be composed of two Senators from each State chosen by the legislature for six years	1	3	1
The Senate shall be composed of two Senators from each State, elected by the people thereof, for six years. [Amendments]	17	1	------
Qualifications of electors of Senators. [Amendments]	17	1	------
If vacancies happen during the recess of the legislature of a State, the executive thereof may make temporary appointments until the next meeting of the legislature	1	3	2
When vacancies happen the executive authority of the State shall issue writs of election to fill such vacancies; provided, that the legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct. [Amendments]	17	2	------
The Vice President shall be President of the Senate, but shall have no vote unless the Senate be equally divided	1	3	4
The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President or when he shall exercise the office of President	1	3	5
The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation	1	3	6
When the President of the United States is tried the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present	1	3	6
It shall be the judge of the elections, returns, and qualifications of its own members	1	5	1
A majority shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members	1	5	1
It may determine the rules of its proceedings, punish a member for disorderly behavior, and with the concurrence of two-thirds expel a member	1	5	2
It shall keep a journal of its proceedings and from time to time publish the same, except such parts as may in their judgment require secrecy	1	5	3

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Senate of the United States—Continued			
It shall not adjourn for more than three days during a session without the consent of the other House	1	5	4
It may propose amendments to bills for raising revenue, but such bills shall originate in the House of Representatives	1	7	1
The Senate shall advise and consent to the ratification of all treaties, provided two-thirds of the members present concur	2	2	2
It shall advise and consent to the appointment of ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers not herein otherwise provided for	2	2	2
It may be convened by the President on extraordinary occasions	2	3	1
No State, without its consent, shall be deprived of its equal suffrage in the Senate	5	------	------
Senators. They shall, immediately after assembling, under their first election, be divided into three classes, so that the seats of one-third shall become vacant at the expiration of every second year	1	3	2
No person shall be a Senator who shall not be thirty years of age, nine years a citizen of the United States, and an inhabitant when elected of the State for which he shall be chosen	1	3	3
The times, places, and manner of choosing Senators may be fixed by the legislature of a State, but Congress may by law make or alter such regulations, except as to the places of choosing	1	4	1
If vacancies happen during the recess of the legislature of a State, the executive thereof may make temporary appointments until the next meeting of the legislature	1	3	2
If vacancies happen the executive authority of the State shall issue writs of election to fill such vacancies; provided, that the legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct. [Amendments]	17	2	------
They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of the Senate and in going to and returning from the same	1	6	1
Senators and Representatives shall receive a compensation to be ascertained by law	1	6	1
Senators and Representatives shall not be questioned for any speech or debate in either House in any other place	1	6	1
No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the United States which shall have been created, or of which the emoluments shall have been increased, during such term	1	6	2

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
No person holding any office under the United States shall be a member of either House during his continuance in office	1	6	2
No Senator or Representative or person holding an office of trust or profit under the United States shall be an elector for President and Vice President	2	1	2
Senators and Representatives shall be bound by an oath or affirmation to support the Constitution	6	------	3
No person shall be a Senator or Representative who, having, as a Federal or State officer, taken an oath to support the Constitution, afterward engaged in rebellion against the United States. [Amendments]	14	3	------
But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments]	14	3	------
Service or labor in one State, escaping into another State, shall be delivered up to the party to whom such service or labor may be due. Fugitives from	4	2	3
Servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist in the United States or any place subject to their jurisdiction. Neither slavery nor involuntary. [Amendments]	13	1	------
Servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State, on account of race, color, or previous condition of. [Amendments]	15	1	------
Sex. Right of citizens to vote shall not be denied or abridged by the United States or any State on account of sex. [Amendments]	19	------	------
Ships of war in time of peace, without the consent of Congress. No State shall keep troops or	1	10	3
Silver coin a tender in payment of debts. No State shall make anything but gold and	1	10	1
Slave. Neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion, or any claim for the loss or emancipation of any. [Amendments]	14	4	------
Slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist in the United States, or any places subject to their jurisdiction. Neither. [Amendments]	13	1	------
Soldiers shall not be quartered, in time of peace, in any house without the consent of the owner. [Amendments]	3	------	------
South Carolina entitled to five Representatives in the first Congress	1	2	3
Speaker and other officers. The House of Representatives shall choose their	1	2	5
Speech or of the press. Congress shall make no law abridging the freedom of. [Amendments]	1	------	------
Speedy and public trial by a jury. In all criminal prosecutions the accused shall have a. [Amendments]	6	------	------
Standard of weights and measures. Congress shall fix the	1	8	5
State of the Union. The President shall, from time to time, give Congress information of the	2	3	------

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
State legislatures, and all executive and judicial officers of the United States, shall take an oath to support the Constitution. All members of the several	6	------	3
States. When vacancies happen in the representation from any State, the executive authority shall issue writs of election to fill such vacancies	1	2	4
When vacancies happen in the representation of any State in the Senate, the executive authority shall issue writs of election to fill vacancies. [Amendments]	17	2	------
Congress shall have power to regulate commerce among the several	1	8	3
No State shall enter into any treaty, alliance, or confederation	1	10	1
Shall not grant letters of marque and reprisal	1	10	1
Shall not coin money	1	10	1
Shall not emit bills of credit	1	10	1
Shall not make anything but gold and silver coin a tender in payment of debts	1	10	1
Shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts	1	10	1
Shall not grant any title of nobility	1	10	1
Shall not, without the consent of Congress, lay any duties on imports or exports, except what may be absolutely necessary for executing its inspection laws	1	10	2
Shall not, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war unless actually invaded or in such imminent danger as will not admit of delay	1	10	3
Full faith and credit in every other State shall be given to the public acts, records, and judicial proceedings of each State	4	1	------
Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	------
Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States	4	2	1
New States may be admitted by Congress into this Union	4	3	1
But no new State shall be formed or erected within the jurisdiction of another State	4	3	1
Nor any State formed by the junction of two or more States or parts of States, without the consent of the legislatures as well as of Congress	4	3	1
No State shall be deprived, without its consent, of its equal suffrage in the Senate	5	------	------
Three-fourths of the legislatures of the States, or conventions of three-fourths of the States, as Congress shall prescribe, may ratify amendments to the Constitution	5	------	------

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
States. When vacancies—Continued			
The United States shall guarantee a republican form of government to every State in the Union	4	4	------
They shall protect each State against invasion	4	4	------
And on application of the legislature, or the executive (when the legislature cannot be convened), against domestic violence	4	4	------
The ratification by nine States shall be sufficient to establish the Constitution between the States so ratifying the same	7	------	------
When the choice of President shall devolve on the House of Representatives, the vote shall be taken by States. [Amendments]	12	------	------
But in choosing the President the vote shall be taken by States, the representation from each State having one vote. [Amendments]	12	------	------
A quorum for choice of President shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. [Amendments]	12	------	------
States or the people. Powers not delegated to the United States, nor prohibited to the States, are reserved to the. [Amendments]	10	------	------
Suffrage in the Senate. No State shall be deprived without its consent of its equal	5	------	------
No denial of right to vote on account of sex. [Amendments]	18	------	------
Suits at common law, where the value in controversy shall exceed $20, shall be tried by jury. [Amendments]	7	------	------
In law or equity against one of the States, by citizens of another State, or by citizens of a foreign State. The judicial power of the United States shall not extend to. [Amendments]	11	------	------
Supreme Court. Congress shall have power to constitute tribunals inferior to the	1	8	9
Supreme Court, and such inferior courts as Congress may establish. The judicial power of the United States shall be vested in one	3	1	------
Supreme Court. The judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	------
The compensation of the judges shall not be diminished during their continuance in office	3	1	------
Shall have original jurisdiction. In all cases affecting ambassadors, other public ministers and consuls, and in which a State may be a party, the	3	2	2
Shall have appellate jurisdiction, both as to law and the fact, with such exceptions and regulations as Congress may make. The	3	2	2
Supreme law of the land. This Constitution, the laws made in pursuance thereof, and the treaties of the United States, shall be the	6	------	2
The judges in every State shall be bound thereby	6	------	2
Suppress insurrections and epel invasions. Congress shall provide for calling forth the militia to execute the laws	1	8	15

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Suppression of insurrection or rebellion shall not be questioned. The public debt, including the debt for pensions and bounties, incurred in the. [Amendments]	14	4	------
T			
Tax shall be laid unless in proportion to the census or enumeration. No capitation or other direct	1	9	4
Tax on incomes authorized without apportionment among the several States, and without regard to any census or enumeration. [Amendments]	16	------	------
Tax or duty shall be laid on articles exported from any State. No	1	9	5
Tax. The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State by reason of failure to pay. [Amendments]	24	1	------
Taxes (direct) and Representatives, how apportioned among the several States	1	2	3
Taxes, duties, imposts, and excises. Congress shall have power to lay	1	8	1
They shall be uniform throughout the United States	1	8	1
Temporary appointments until the next meeting of the legislature. If vacancies happen in the Senate in the recess of the legislature of a State, the executive of the State shall make	1	3	2
Tender in payment of debts. No State shall make anything but gold and silver coin a	1	10	1
Terms of four years. The President and Vice President shall hold their offices for the	2	1	1
Term of office. President, not more than twice. [Amendments]	22	------	------
Term for which he is elected. No Senator or Representative shall be appointed to any office under the United States which shall have been created or its emoluments increased during the	1	6	2
Territory or other property of the United States. Congress shall dispose of and make all needful rules and regulations respecting the	4	3	2
Test as a qualification for any office or public trust shall ever be required. No religious	6	------	3
Testimony of two witnesses to the same overt act, or on confession in open court. No person shall be convicted of treason except on the	3	3	1
Three-fourths of the legislatures of the States, or conventions in three-fourths of the States, as Congress shall prescribe, may ratify amendments to the Constitution	5	------	------
Tie. The Vice President shall have no vote unless the Senate be equally divided	1	3	4
Times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof	1	4	1
But Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators	1	4	1

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Title of nobility. The United States shall not grant any	1	9	8
No State shall grant any	1	10	1
Title of any kind, from any king, prince, or foreign state, without the consent of Congress. No person holding any office under the United States shall accept of any	1	9	8
Tonnage without the consent of Congress. No State shall lay any duty of	1	10	3
Tranquility, provide for the common defense, &c. To insure domestic. [Preamble]	------	------	------
Treason shall consist only in levying war against the United States, or in adhering to their enemies, giving them aid and comfort	3	3	1
No person shall, unless on the testimony of two witnesses to the same overt act, or on confession in open court, be convicted of	3	3	1
Congress shall have power to declare the punishment of	3	3	2
Shall not work corruption of blood. Attainder of	3	3	2
Shall not work forfeiture, except during the life of the person attained. Attainder of	3	3	2
Treason, bribery, or other high crimes and misdemeanors. The President, Vice President, and all civil officers shall be removed from office on impeachment for and conviction of	2	4	1
Treason, felony, and breach of the peace. Senators and Representatives shall be privileged from arrest while attending or while going to or returning from the sessions of Congress, except in cases of	1	6	1
Treasury, but in consequence of appropriations made by law. No money shall be drawn from the	1	9	7
Treaties. The President shall have power, with the advice and consent of the Senate, provided two-thirds of the Senators present concur, to make	2	2	2
The judicial power shall extend to all cases arising under the Constitution, laws, and	3	2	1
They shall be the supreme law of the land, and the judges in every State shall be bound thereby	6	------	2
Treaty, alliance, or confederation. No State shall enter into any	1	10	1
Trial, judgment, and punishment according to law. Judgment in cases of impeachment shall not extend further than to removal from, and disqualification for, office; but the party convicted shall nevertheless be liable and subject to indictment	1	3	7
Trial by jury. All crimes, except in cases of impeachment, shall be tried by jury	3	2	3
Such trial shall be held in the State within which the crime shall have been committed	3	2	3
But when not committed within a State, the trial shall be at such a place as Congress may by law have directed	3	2	3
In all criminal prosecutions the accused shall have a speedy and public. [Amendments]	6	------	------

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Suits at common law, when the amount exceeds $20, shall be by. [Amendments]	7	------	------
Tribunals inferior to the Supreme Court. Congress shall have power to constitute	1	8	9
Troops or ships of war in time of peace without the consent of Congress. No State shall keep	1	10	3
Trust or profit under the United States, shall be an elector for President and Vice President. No Senator, Representative, or person holding any office of	2	1	2
Two-thirds of the members present. No person shall be convicted on an impeachment without the concurrence of	1	3	6
Two-thirds, may expel a member. Each House, with the concurrence of	1	5	2
Two-thirds. A bill returned by the President with his objections, may be repassed by each House by a vote of	1	7	2
Two-thirds of the Senators present concur. The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided	2	2	2
Two-thirds of the legislatures of the several States. Congress shall call a convention for proposing amendments to the Constitution on the application of	5	------	------
Two-thirds of both Houses shall deem it necessary. Congress shall propose amendments to the Constitution whenever	5	------	------
Two-thirds of the States. When the choice of a President shall devolve on the House of Representatives, a quorum shall consist of a member or members from. [Amendments]	12	------	------
Two-thirds of the whole number of Senators. A quorum of the Senate, when choosing a Vice-President, shall consist of. [Amendments]	12	------	------
Two-thirds, may remove the disabilities imposed by the third section of the fourteenth amendment. Congress, by a vote of. [Amendments]	14	3	------
Two years. Appropriations for raising and supporting armies shall not be for a longer term than	1	8	12
U			
Union. To establish a more perfect. [Preamble]	------	------	------
The President shall, from time to time, give to Congress information of the state of the	2	3	1
New States may be admitted by Congress into this	4	3	1
But no new States shall be formed or erected within the jurisdiction of another	4	3	1
Unreasonable searches and seizures. The people shall be secured in their persons, houses, papers, and effects against. [Amendments]	4	------	------
And no warrants shall be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. [Amendments]	4	------	------

[1] **Article of original Constitution or of amendment.**

	Article [1]	Section	Clause
Unusual punishments inflicted. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and. [Amendments]	8	------	------
Use without just compensation. Private property shall not be taken for public. [Amendments]	5	------	------
Useful arts, by securing for limited times to authors and inventors the exclusive right to their writings and inventions. Congress shall have power to promote the progress of science and the	1	8	8
V			
Vacancies happening in the representation of a State. The executive thereof shall issue writs of election to fill	1	2	4
Vacancies happening in the representation of a State in the Senate. The executive thereof shall issue writs of election to fill. [Amendments]	17	2	------
Vacancies happening in the Senate in the recess of the legislature of a State. How filled	1	3	2
Vacancies that happen during the recess of the Senate, by granting commissions which shall expire at the end of the next session. The President shall have power to fill	2	2	3
Validity of the public debt incurred in suppressing insurrection against the United States, including debt for pensions and bounties, shall not be questioned. [Amendments]	14	4	------
Vessels bound to or from the ports of one State, shall not be obliged to enter, clear, or pay duties in another State	1	9	6
Veto of a bill by the President. Proceedings of the two Houses upon the	1	7	2
Vice President of the United States shall be President of the Senate	1	3	4
He shall have no vote unless the Senate be equally divided	1	3	4
The Senate shall choose a President pro tempore in the absence of the	1	3	5
He shall be chosen for the term of four years	2	1	1
The number and the manner of appointing electors for President and	2	1	2
In case of the removal, death, resignation, or inability of the President, the powers and duties of his office shall devolve on the	------	1	5
[Amendments]	25	------	------
Congress may provide by law for the case of the removal, death, resignation, or inability both of the President and	2	1	6
[Amendments]	25	------	------
On impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors, shall be removed from office. The	2	4	------
Vice President. The manner of choosing the. The electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves. [Amendments]	12	------	------

[1] Article of original Constitution or of amendment.

	Article[1]	Section	Clause
Vice President. The manner of choosing—Continued			
Additional provision for succession through act of Congress. [Amendments]	20	4	------
Nomination by President in case of vacancy in office. [Amendments]	25	2	------
Term of office, beginning and ending. [Amendments]	20	1	------
The electors shall name, in distinct ballots, the person voted for as Vice President. [Amendments]	12	------	------
They shall make distinct lists of the persons voted for as Vice President, which lists they shall sign and certify, and send sealed to the seat of Government, directed to the President of the Senate. [Amendments]	12	------	------
The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall be then counted. [Amendments]	12	------	------
The person having the greatest number of votes shall be Vice President, if such number be a majority of the whole number of electors. [Amendments]	12	------	------
If no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice President. [Amendments]	12	------	------
A quorum for this purpose shall consist of two-thirds of the whole number of Senators; and a majority of the whole number shall be necessary to a choice. [Amendments]	12	------	------
But if the House shall make no choice of a President before the 4th of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. [Amendments]	12	------	------
No person constitutionally ineligible as President shall be eligible as. [Amendments]	12	------	------
Vacancy in office of. President shall nominate a Vice President who shall take office upon confirmation by both Houses of Congress. [Amendments]	25	------	------
Violence. The United States shall guarantee to every State a republican form of government, and shall protect each State against invasion and domestic	4	4	------
Virginia entitled to ten Representatives in the first Congress	1	2	3
Vote. Each Senator shall have one	1	3	1
The Vice President, unless the Senate be equally divided, shall have no	1	3	4
Vote requiring the concurrence of the two Houses (except upon a question of adjournment) shall be presented to the President. Every order, resolution, or	1	7	3
Vote, shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The right of citizens of the United States to. [Amendments]	15	1	------

[1] **Article of original Constitution or of amendment.**

	Article[1]	Section	Clause
Vote, shall not be denied or abridged by the United States or any States by reason of failure to pay any poll tax or other tax. The right of citizens of the United States to. [Amendments]	24	1	------
Vote. Right of citizens who are eighteen years of age or older to vote shall not be denied or abridged by the United States or any State, on account of age. [Amendments]	26	1	------
Right of citizens to vote shall not be denied or abridged by the United States or any State on account of sex. [Amendments]	19	------	------
Vote of two-thirds. Each House may expel a member by a	1	5	2
A bill vetoed by the President may be repassed in each House by a	1	7	2
No person shall be convicted on an impeachment except by a	1	3	6
Whenever both Houses shall deem it necessary, Congress may propose amendments to the Constitution by a	5	------	------
The President may make treaties with the advice and consent of the Senate, by a	2	2	2
Disabilities incurred by participation in insurrection or rebellion, may be relieved by Congress by a. [Amendments]	14	3	------
W			
War, grant letters of marque and reprisal, and make rules concerning captures on land and water. Congress shall have power to declare	1	8	11
For governing the land and naval forces. Congress shall have power to make rules and articles of	1	8	14
No State shall, without the consent of Congress, unless actually invaded, or in such imminent danger as will not admit of delay, engage in	1	10	3
War against the United States, adhering to their enemies, and giving them aid and comfort. Treason shall consist only in levying	3	3	1
Warrants shall issue but upon probable cause, on oath or affirmation, describing the place to be searched, and the person or things to be seized. No. [Amendments]	4	------	------
Weights and measures. Congress shall fix the standard of	1	8	5
Welfare and to secure the blessings of liberty, &c. To promote the general. [Preamble]	------	------	------
Welfare. Congress shall have power to provide for the common defense and general	1	8	1
Witness against himself. No person shall, in a criminal case, be compelled to be a. [Amendments]	5	------	------
Witnesses against him. In all criminal prosecutions the accused shall be confronted with the. [Amendments]	6	------	------
Witnesses in his favor. In all criminal prosecutions the accused shall have compulsory process for obtaining. [Amendments]	6	------	------

[1] Article of original Constitution or of amendment.

	Article [1]	Section	Clause
Witnesses to the same overt act, or on confession in open court. No person shall be convicted of treason unless on the testimony of two	3	3	1
Writ of habeas corpus shall not be suspended unless in case of rebellion or invasion the public safety may require it	1	9	2
Writs of election to fill vacancies in the representation of any State. The executives of the State shall issue	1	2	4
Written opinion of the principal officer in each of the Executive Departments on any subject relating to the duties of his office. The President may require the	2	2	1
Y			
Yeas and nays of the members of either House shall, at the desire of one-fifth of those present, be entered on the journals	1	5	3
The votes of both Houses upon the reconsideration of a bill returned by the President with his objections shall be determined by	1	7	2

[1] Article of original Constitution or of amendment.

SUBJECT INDEX

A

Abolition. *See* Slavery
Adams, John
on America as pioneer of world freedom, 7
and "ancient principles," 41
and Anglo-Saxon culture, study of, 54
and Constitutional Convention, absent from, 137
and Declaration of Independence committee, 26
on "divine science" of sound government, 195
elected Vice President, 229
endorses Constitution, 227
on Founders' sense of mission, 8
on inflation, 117
minister to England, 227
and morality among free people, 53
and official seal, creation of, 32
on population, 6, 411
on religion in America, 677
Adams, Samuel
and "ancient principles," 41
and Articles of Confederation, weakness under, 123
on constitutional laws, 597
on corruption, and constitutional government, 53
on moral heritage, responsibility to preserve, 386
on leaders, need to choose wise and virtuous, 245
master's degree of, 16
on religion of America, 677
on right to bear arms, 695
supports Constitution, 227
on welfare state, 219
Admiralty jurisdiction, 600
Agencies, federal. *See also* specific agencies by name
administrative laws of, 252
at White House, 543
Agnew, Spiro T., 758
Agricultural Marketing Agreement Act, 405
Agriculture
and farm subsidies, 216
federal authority over, 186
Airborne commerce, 404
Alaska
percentage of federal lands, 459
purchased by U. S., 636
Aliens, illegal, 414
Ambassadors, cases involving, 600, 607. *See also* State Department
Amendment, 644-50. *See also* Constitutional amendment
to Articles of Confederation, process of obtaining, 68
to the Constitution, process of obtaining, 578-79, 644-49, 650, 687
to curb courts, 579, 589-90
and District of Columbia, representation in, 650
and general welfare clause, needed to limit, 390
no presidential veto allowed on, 360
a protection of the Constitution, 6
and state initiative, 647-49
for women's suffrage, 749
Amendments. *See* specific amendments
America, 1, 194. *See also* United States
food-production miracles of, 766
and freedom, pioneer of world, 7-9, 194
freedom as greatest export of, 12
government in, a mixed formula, 192
governmental system of, has strayed from original, 12
the hope of the world, 8, 238-39
miracle of, 5
as peacemaker, 774
political dissolution of, 126-27
political success formula of, 1
and size of union, 239-40
American colonies, treatment of, by George III, 24
American ethic, 218
Americans
education of, 218
freedom of, 219
generosity of, 219

prosperity of, 218
standard of living of, 211
Ames, Fisher
on Congressmen, term of office for, 269
on government, weakness of, under Articles of Confederation, 126-27
on Senators as state ambassadors, 298
Amnesty
power of the President, 546
proclamation of, 726
"Analogy of the Broad Table," 274
Anarchy, Founders' views regarding, 42
"Ancient Principles," 38, 41, 42, 61
of Anglo-Saxons, 27, 55
and Congress, 321
in Declaration of Independence, 28, 31
and Israel, practiced by, 27
and Jefferson, 38
restoration of, 4
sources of, 32, 47
Andre, John, 99
Anglo-Saxons, 7, 54-59
"ancient principles" of, 27, 55
jury system of, 58
penalties of, 59
People's Law of, 47
represented on seal of the United States, 32
"Annals of Congress," becomes *Congressional Record*, 229
Annapolis, trade conference at, 135
Anthony, Susan B., and amendment for universal women's suffrage, 749
Anti-Saloon League, 748
Antitrust laws, need to be reexamined, 215. *See also* Sherman Anti-Trust Act
Apportionment, levying taxes by, 378
Appropriations, 356, 445, 484-85, 539
Aristocracy, 486, 500, 641
advantages and disadvantages of, 192
definition of, 44
Senate as an, 356
Arizona, percentage of federa' lands, 459
Armed citizenry, 694
Armed forces. *See* Military
Armentano, D. T., on Standard Oil's dissolution, 214
Arms, right to bear, 694-700
Army. *See* also Defense, national; War powers
authority to raise an, 448
and Founders' fear of military dictatorship, 44
President is commander in chief of, 539-41
standing, opposition to, 444-45
standing, under Articles of Confederation, 67
Army, Continental, uniform of, 70. *See also* Revolutionary War
Arnold, Benedict, 72-73
at Bemis Heights, battle of, 84-85
betrayal by, 99
escapes capture, 99
and Fort Ticonderoga, fall of, 82
leads British against Americans, 99
and St. Leger, deceives, 83-84
and Tory volunteers, 101
Arthur, Chester A., vetoes river and harbor bills, 391
Articles of Confederation
amendments to, process of obtaining, 68, 134
Congress, powers of, under, 68
Congress in, 258
Congressional draft of the, 66
and copyright and patent protection, lack of, 430
debts under, 68, 654
and government, central, weak form of, 111-31, 172-74
minority rule of, 123
outline of, 67-68
ratification of, 66
and state supremacy, 198-99, 491
and states, limitations on, 67
and states as independent confederations, 492
and taxing power, 378
and war, cost of, 67
weaknesses of, 69, 118, 123, 126-27, 137, 172, 371
Assemble, right of people to peaceably, 689
Athens, golden age of, 264
Attainder, bill of, 475
Attainder of treason, 626
Attorney General, may appeal directly to the Supreme Court, 584
Authors, and right to have works copyrighted, 430
Autocracy, 645
definition of, 44
drawback of, 244

B

Backus, Isaac
on abolition of slavery, 468
on religious tests, 667
on titles and emoluments creating tyranny, 487-88
Bail, in criminal cases, 711
Bailey, Joseph W., and tax bill, 738-39
Balance of power, 191-93, 250-51, 769
Balanced Budget Amendment, 743
Baldwin, Abraham, 470
Bancroft, George, 235
Bank notes, 495
Bank of the United States, 424, 654
Bankruptcy
Code of 1978, 417

Congress's right to establish uniform laws of, 416
of United States, 124
Banks, 497
Federal Reserve System replaces national, 414
Battle
at Bemis Heights, 84
at Bennington, 83
at Brandywine, 88
at Fort Ticonderoga, 82
at Freemen's Farm, 83-84
at Germantown, 89
at King's Mountain, 100
at Monmouth, 92
at New York, 33, 77
at Princeton, 80
at Savannah, 95-96
at Trenton, 79
at Yorktown, 102-5
Baxter, William, 214
Bemis Heights, battle at, 84
Bennington, battle at, 83
Benson, Ezra Taft, and federal crop subsidy programs, 539
Berger, Victor L., House refuses to seat, 331
Bicameral legislature, 260
Bill of attainder, 317, 475, 626
Bill of Rights
approved by Congress and ratified by states, 226
as declaration of prohibitions, 674
Founders on a, 674-75
and intervention, 674-5
lack of, in Constitution, 225
Mason authors, 145
new, to restore Founders' vision, 257
purpose of, 675
Bills of credit or debt currency, 423
Bills, Congressional
how, become law, 357-68
two kinds of, 353
Binding clause of the Constitution, 575
Black, Hugo L., on government encouragement of religion, 686
Blackstone, William
on private and public morals, 181
on statutes that violate laws of nature and God, 354-55
Blount, William, expelled from Senate, 335
Bolivar, Simon, 235
Bondsmen, 56
Boston
difficulties of American army at, 24
liberation of, by Continental Army, 75
siege of, 72
Bowdoin, James, on checks and balances, 189-90
Brandywine, battle of, 88
Brearley, David, on proportional representation, 273-74
Breymann, Heinrich von, 85
Britain, name changed by Anglo-Saxons to England, 54
British. *See also* England; Revolutionary War
attack Iroquois towns, 95
at Fort Detroit, 95
forts, refuse to withdraw from, 112
fur operations, 112
Indian relations of, 112
island possessions of, captured by French, 95
occupy, then abandon Philadelphia, 87-88, 92
occupy Canadian border, 112
occupy New Jersey, 81
peace treaty with, 107
and prisoners, atrocities to, 97
Spain declares war against, 95
at Yorktown, 102-5
British Empire, Ruler's Law in, 46
British Government, system of, rejected by Founders, 167-68
British Labor Party, defeated in elections, 215
British Parliament, Founders on, 168
British War Office, allows mobilization of Indians, 94
Brooks, E., on dependency of federal republic on states, 640
Brooks, John, on army committee to Congress, 114
Buchanan, James, 412
Bureau of Indian Affairs, 410-11
Burgoyne, John
in campaign against New England, 81-82
defeat of, 85
at Fort Ticonderoga, 82-83
surrenders at Saratoga, 87
Burwell, Belinda, 21
Butler Case, and Hamiltonian doctrine, 388
Butler, Pierce
on Constitution, ratification of, 669
on money, 420-21
on presidential electors, 526
on Senators, citizenship requirement of, 310
on a single executive, 512
on states, creation of new by merging existing states, 637
Butler, Sir John, mobilizes Indians, 94

C

Cabinet, 427
departments in, 542-43
lack of a, 225
members of, how the President chooses, 542
responsibilities of members of the, 541

Cabinet system, 541
Calendar
bills place on congressional, 365-66
Union, for appropriation bills, 365
California, percentage of federal lands, 459
Camden, South Carolina, British victory at, 98
Campaign spending, 323
Campbell, Archibald, attacks Savannah, 95
Canada
border of, occupied by British troops, 112
invited to join U.S. in Articles of Confederation, 68
provision for, to enter Union, 635
and Revolutionary War, 24
Washington given orders to invade, 72, 76
Capital crime, 703
Capitation tax, definition of, 477. *See also* Tax; Taxes
Carolinas, frontiersmen of, fight British, 100
Carroll, Daniel
on limitation of regulation of commerce, 484
on state compensation for Senators, 343
Carter v. **Carter Coal Company,** 406
"Catechism on the Constitution," 245
Censure, of a member of Congress, 335
Census, 276-77
all persons counted in, 724
Indians initially not included in, unless paying taxes, 274
as an investigative device, 278
Census Bureau, as a source of statistical data, 278
"Chains of the Constitution," 570
Chamberlain, John, 216-18
Chaplain
of the House of Representatives, 284
of the Senate, 313
Charles I, 472-73
Charleston, falls to British, 97
Charter, colonies organize under a formal, 65
Checks and balances, 187-90, 371, 571-72. *See also* Separation of powers, horizontal
Cherokee nation, in confederation America, 112
Chief Justice, to preside over presidential impeachment hearings, 316. *See also* Supreme Court
Chinard, Gilbert, on Jefferson's ambition, 32
Choctaw nation, in confederation America, 112
Church and state, and First Amendment, 675-88
Circuit courts, 584
Citizens
people of captured lands cannot become U.S., 443
privileges and immunities of, 631
Citizenship
forfeiture of, 415
requirements for, 413
right of Americans to enjoy all privileges of, 722
universal, 632
Civil Aeronautics Act, and regulation of airborne commerce, 404
Civil Aeronautics Board, 404
Civil cases, and the right of trial by jury, 710
Civil offices, legislators may not accept, 347-50
Civil Rights Act, 721
Civil suits against legislators, 346
Civil War
creates demand for new products, 212
debts of, to be paid, 726
and state sovereignty, 746
talk of, after Revolutionary War, 112
Clark, George Rogers, 94
Clark, J. Reuben, on America as peacemeaker, 774
Classics, Founders' study of, 61
Clayton Act, 214
Clerk of the House of Representatives, 283
Cleveland, Grover
on government as giver of gifts, 391
issues executive orders, 253
Clinton, Henry, 92
and Archibald Campbell, 95
and French fleet, sends ships to fight, 103
and John Andre, 99
and New York, orders troops to, 92
and Philadelphia, evacuation of, 92
and the South, campaign to conquer, 95-97
Clinton, William Jefferson, Impeached, 563
Closure rule, limits debate in Senate, 367
Clymer, George, 483
Coercive Acts of George III, 114
Coinage, need for uniform, 495-96
Coins, Congress to fix value of, 68, 420
Collectivism, ideas on, permeate country after World War I, 216
Colorado
gives women right to vote, 749
percentage of federal lands, 459
Commerce
airborne, 404
foreign, power to regulate, 69
interstate, and inspection provision, 502
interstate, power to regulate, 69
regulation of, 399, 400-411, 484
and states' which had discriminatory regulations, 401
Supreme Court definition of, 401-2
unconstitutional doctrines of, 407
unifying influence of, 238
Commerce clause
abuse of, 406
develops elasticity, 399
states agreement to, 467

Commercial treaties, Corbin on, 550-51
Committee bill, 357, 365
Committee chairman
of the House of Representatives, 283
of the Senate, 313
Committee on Detail, 161
Committee on Style, 161
Committee of the Whole, in House of Representatives, 366
Committees of correspondence, 114
Common law, suits of, and right of trial by jury, 710
Common-law jury, 190-91, 256, 257, 614-15
limitations on the, 615-16
Common market, 408-10, 501
Communication, interstate, 403
Communications Revolution, 2
Communism, 42
Community, responsibility of, 180
Competition, paradox of, 208-9
Computer Revolution, 3
Confederacy of the Civil War, participants in not allowed to hold office, 725
Confederated republic, 172, 198-99, 265. *See also* Articles of Confederation; Confederation of independent states
Confederation Congress. *See* Congress; Continental Congress
Confederation of independent states, 65, 167. *See also* Articles of Confederation; Confederated Republic
economic collapse of, 124
leaders of American, abandon Washington, 96
weaknesses of a, 171
Confederations in Europe, failure of, 171-72
Confession in open court, required for treason conviction, 624
Conflict of interest, of elected officials, 348
Congress. *See also* Confederation Congress; Continental Congress; House of Representatives; Senate
acts of, constitutionality of, 584
adjourning of, 340
and administrative laws, monitoring of, 254
and amendments to the Constitution, 648-49
annual sessions of, 328-30
and appellate jurisdiction of Supreme Court, 612
appropriations of, 539
and army, funding of, 444
attendance at, 333
authority of, 460
and bank acts, 424
and bankruptcy laws, 416
and bills, process of becoming laws, 357-68
and campaign spending, sets limits on, 323
candidates for, incentives for, 348-49
censure of a member of, 335
and civil offices, members may not accept, 347-50
civil suits against members of, 346
and coins, counterfeiting of, 428
and coins, to fix value of, 68, 420
Committee of the States, appointed by, 68
and Constitution, power to pass laws needed to implement, 459
and Constitution, sends to states for ratification, 224
counsel to each house of, 363
and courts for federal cases, 434
and crimes committed on high seas, 434
and crimes outside states, place of trial for, 621
and debts, expending revenue to pay, 380
and election day, general, 323
and enemies, power to terminate importation of, 466
expulsion from, 335, 564
and federal lands, 458
and foreign coins, 420
and foreign commerce, 400-411
and freedom of speech or of the press, 688
and general welfare, 353, 387
and gold standard, 497
and grievances, redress of, 689-90
and host states, 456
and importation, 400
independence of, 297
and Indians, regulating trade among, 410
and inferior courts, 584
and inferior officers, may delegate authority to appoint, 557
and interstate commerce, 400
lawmaking authority vested exclusively in, 251
and laws, administration of, 539
and legislation, 721
location of, to be permanent, 455
and meetings, times of, 328, 751
and military, 444, 449, 503
and money, exclusive right to coin, 493
and National Bureau of Standards, 427
and navy, power to provide and maintain, 449
and new states, creation of, 636
and offenses committed against nations, 436
organization of, 321
and paper money during Civil War, 424
and postal services and routes, 428
power of, to allow President to resume his duties, 761
power of, to determine how it will choose President, 753
powers granted to, 371-95, 406
powers of, 250-57
powers of, expanding, 390
powers of, limited, 593-94
powers of, under Articles of Confederation, 68

and President, acting, 752
and President, assigns responsibility to, 508
and President, selection of, 519-20
and President and Vice President, may provide for office of, 530
and prisoners of war, 443
quorum in, 331-33, 338
and religions, establishment of, 675
representation in, formula for allocating, 160, 290
reprimand of a member of, 335
restraints on, 465-88
and right of people to peaceably assemble, 689
roll call in, 338
rules and proceedings of, 334
sends Constitution to states, 224
and slaves, power to put tax on, 471
and state duties, 502
and state militias, 450
and states, can intervene with, 323
and states, can prevent them from laying duties, 501
and states, creation of, 636
and states, may prescribe proving of official proceedings of, 631
states entitled to at least one Representative each in, 280
structure of, 67
subcommittees in, 364
and tariffs on imports, 400
and tax collection, 372
and taxation of goods exported from states, 378
and taxes during World War I, 444
and territories, disposition of, 638
and treason, declaring punishment for, 624-25
and treason, may remove convicted parties from office, 546
treaties, authorized to make, 548
and war, exclusive authority to declare, 440, 493
and war, failure to declare, 622
Washington's fifth annual address to, 385-86
and weights and measures, 427
Congressional districts, 272
Congressional immunity, 347
"Congressional Record," 336
Congressional voting districts, 272, 322
Congressmen. *See also* Representatives
age requirement of, 270
citizenship requirement of, 271
compensation for, 341-42
constituents of, 564
term of office of, 269
Connecticut Compromise, 151, 160-61, 273, 275
on wording in Constitution regarding treason, 623
Connelly Reservation, 436
Constitution, 9, 130-31, 195, 227, 570, 575-77
amending of, by state legislatures, 256, 647-48
amending the, 6, 644-49
and "ancient principles," 41
Bill of Rights, lack of, 225
binding clause of the, 575
and Confederation Congress, approved by, 224
changes in, 6
checks and balances in the, 187-90, 371
contradictory clause in, 360
and debts under Articles of Confederation, 654
and defense, national, as a goal of, 243-44
and "domestic tranquility" as a goal of, 241
and federal government as sovereign, 251
and Freedom Revolution, 2
interpretation of, should be strict, 6
interpreting the, 251, 575-76, 594-97, 685
and the Israelite system, 53
and judicial activism, 256
judicial checks and balances in the, 571-72
judicial power clause of, 575
and judiciary, federal, 578
and judiciary, overzealous, 571
and justice as a goal of, 239-41
knowledge of, 245
leaders of other countries on the, 9
learning about, importance of, 12
and legislative principles, 355
and liberty as a goal of, 245-47
limitations established by the, 597
miracle of the, 5, 260
and money system, 419
nationalizing clause of the, 630
"necessary and proper" clause of, 459-62
oath to support, 663-66
obsolescence of, discussed openly, 216
and patents and copyrights, 430
Preamble of, 233-45
and Prohibition amendment, 748
protections to, 256-57
ratification of, process of, 645, 668-70
ratification of, story of, 223-29
ratified by state conventions, 227
reaction to, 224-25
rights in the, enumerated, 712
signing of the, 162, 223, 670
and slavery, restricting before 1808, 649
states may amend, by calling convention, 256
states' opposition to, withdrawn, 673
and states as sovereigns in their realms, 251
supremacy clause of, 571, 575, 657
Supreme Court as guardian of, 571
as supreme law of the land, 594, 658-59
and taxes, 378
and territorial claims, 639

treason only crime defined in, 621
and union as a goal of, 235-39
as a vital, living blueprint, 775
and welfare, general, as a goal of, 244

Constitutional amendment. *See also* Amendment
cannot deprive states of equal representation, 650
to regulate federal judiciary, needed, 578-79
to restore ideals of the Founders, needed, 687
to restore powers of common-law jury, needed, 257

Constitutional Convention, 157-62
and army, 444
Committee on Detail appointed, 161
Committee on Style appointed, 161
compromise of, on representation, 258
Congress resists calling a, 133-34
convenes, 157
delegates to the, 136-53
and duties, imposts, and excises, 378
Franklin pleads for prayer in, 159-60
and Hamilton, proposed by, 135
need for, 106
and President, proposed limiting to one term, 755
principal personalities at the, 138-53
rules adopted by, 157
and slavery, 466
and Virginia's Fifteen Resolves, 154-58

Constitutional formula of Founders, 371, 675-76

Constitutional money, 420-21

Constitutional supremacy, 175, 199, 575-76

Consuls, 600, 607

Continental Congress. *See also* Congress
army committee to, 114
and Canadian border, powerless to make British withdraw from, 112
compensation of members of, 341
and Constitution, approves without making changes, 224
and Constitution, members of, appointed to draft, 65
and Constitution, sends to states, 224
and Constitutional Convention, authorizes, 135
and convention in Philadelphia, invites delegates to, 135
and Declaration of Independence, approves, 1
and Johann de Kalb, appointment of, 97
inflationary policies of, after Revolutionary War, 116-17
lawmaking authority vested exclusively in, 251
loss of confidence in, 117
and Nathanael Greene, rejects nomination of, 97
and paper money, 116-17
powers of, under Articles of Confederation, 68
and privately owned banks, authorizes, 424
and states, passes laws which preempt functions of, 252
structure of, 67
and taxation, no powers of, 116
and Washington, authorizing him to commandeer supplies, 90
weakness of, 90, 112

Continental Army
attacks Princeton, 80
no official uniform of, 70

Continental currency
devaluation of, 117, 420
government refuses to accept taxes paid in, 117

Contracts, legislative interference in, 500

Copyright laws, 430-32

Corbin, Francis
on coercive power, need for, 124
on commercial treaties, 550-51
on Confederation, economic collapse of, 124
on separation of powers, vertical, 185
on state militia, 447-48, 451
on taxes, 480, 481
on treaties as supreme law, 660

Cornwallis, Lord Charles, in Revolutionary War, 79-80, 97-105

Corwin, Edward S.
on Hamiltonian doctrine, 388
on a quorum in Congress, 333
and Supreme Court's stages of development, 578

Council on Environmental Quality, 543

Counsel, right of accused to have, 709

Counterfeiting, 428

County, responsibility of a, 480

County conventions, held to draft petitions after Revolutionary War, 114

Court of Claims, 433, 584

Court of Customs Appeals, 433, 584

Court-martial, 704

Courts, 114, 225, 252, 256-57, 571, 584, 614. *See also* District courts; Federal courts; Judges; Judicial system; Judiciary; Supreme Court
and amendment to curb, need for, 579, 589-90
and the Constitution, subversions of, 588-89
district, 584-85
federal, and the Constitution, 595-96
jurisdiction of, 592, 602
lower, 433-34
power of Congress to create, 434

Creek nation, 112

Crime
federal, 435
infamous, 703

Criminal cases, and excessive bail, 711

Criminal charges, against impeached officials, 318
Criminal justice, nationalizing, 577
Criminal prosecutions, 708-9
Criminals
extradition of, under Articles of Confederation, 67
and involuntary servitude, may be sentenced to, 720
Crockett, Davy, 391-92
Cruel and unusual punishment, 711-12
Cruger, Nicholas, 142
Cumberland Road bill, 390

D

Dana, Francis
on potential attack by former Americans, 128
on *habeas corpus,* 474
Davie, Caleb, on lack of power to raise revenues, 122
Davie, William
on aristocracies, 641
on Articles of Confederation, weaknesses of, 120-21
on the Constitution as the supreme law of the land, 659
on electoral college, 527
on electors, 521
on government by the people, 176
on house journals, 337
on the President, disadvantages of a limited term for, 514
on the President, fixing responsibility on, 511
on Senate structure, 290-91
on Senator's role, 295
on states, dangers of combinations of, 325-26
on states, internal affairs of, 605
Dawes, Thomas, Jr., 373
on direct taxes, 481
on House turnover, 445-46
Dawson, John, on horizontal separation of powers, 187
de Kalb, Johann, 97, 98
de Montesquieu, Charles, 258
de Tocqueville, Alexis. *See* Tocqueville, Alexis de
de Tracy, Destutt, on paper money, 116
Debate in House, limiting of, 367
Debs case, 639
Debt, national, 380-81, 383, 392-97, 654-57
Debt currency or bills of credit, 423
Debtors' prison, in Massachusetts, 114
Debts, 393-95, 654, 656
and Articles of Confederation, to be honored under, 68
of Civil War to be paid, 726
Congress's power to contract, 380
and Constitution, valid under, as under Articles of Confederation, 654
Founders on, 393
of states, 656-57
Decatur, Commodore, defeats Barbary pirates, 434
Declaration of Independence
adopted, 31
"ancient principles" in, 28, 31
committee on, 26
a compact among states, 65
Congress approves, 31
first public reading of, 31
and George III, 252
Jefferson as author of, 31
Jefferson encourages emancipation process in, 466
and People's Law, 46
and quartering of soldiers, 701
signing of, 31
and Ruler's Law, 46
and taxation without representation, 378
Defense, national, 381-86. *See also* Army; Military; Militia; Navy; War powers
and the Constitution, as a goal of, 243-44
"Defense of the Constitutions of Government of the United States of America," 137
Delegates
to the Constitutional Convention, 136-53
of Continental Congress, not subject to arrest, 67
Democracy, 264-66
"Democracy in America," by Alexis de Tocqueville, 245
Democratic elections, 267-68
Democratic republic, 265. *See also* Republic
United States as a, 264
Department of Agriculture, 427
Department of Commerce, 427
Depositions, 708
Depression, aftermath of Revolutionary War, 114
Deregulation, 210, 405
Despotism, 129
Detroit, British refuse to withdraw from, 112
Dickinson, John, 66
authors Fabius letters supporting Constitution, 150
authors *The Letters of a Farmer in Pennsylvania,* 150
biographical summary of, 150
on Congress, power of, to create courts for federal cases, 434
and Declaration of Independence, opposes, 150
as the "Penman of the Revolution," 150
on Senate, leaders in, 296
on Senators, popular election of, 296

Diplomatic corps, federal courts have jurisdiction over cases involving, 600. *See also* State Department
Direct taxes. *See also* Tax; Taxes
explanation of, 478-79
Founders' position on, 373
and indirect, important to distinguish between, 372
levied by apportionment, 378
Disarmament, political, the threat of, 694-95
Discharge rule, in Congress, 366
Disfranchisement, Franklin on, 268. *See also* Vote
District courts, 584-85. *See also* Courts; Judges; Judiciary
District of Columbia, 455-57
amendment to allow representation to, 650
and right of residents to vote, 757
Districts, Congressional, 272
Disunion, 238, 470
Divine right of kings, Locke on, 233
Dollar, erosion of U.S., 424-25. *See also* Monetary system; Paper money; Prosperity economics
"Domestic tranquility," as a goal of the Constitution, 242-44
Domestic violence, states shall have federal assistance against, 642
Doorkeeper of the House of Representatives, 283
Double jeopardy, protection against, 705
Douglas, William O., on religious classes during school day, 686
Dual Federalism, 199
Due process of law, 706
guaranteed by Fourteenth Amendment, 723
Duties, 375, 480. *See also* Tax; Taxes
Congress given power to collect, 372, 376-79
on imports and exports, no state shall levy, 501

E

East Florida, 112
Eastman, Max, 217-18
Economic freedom, 207, 220
Economics. *See* Prosperity economics
Edison, Thomas A., patents of, 432
Education, importance of, in a republic, 234
Eighteenth Amendment, 745
repeal of, 745, 754-55
resistance to enforcement of, 749
and Volstead Act, 754
Election day, Congress declares a general, 323
Elections, 327-28, 375
corruption in state, 323
for federal offices, 322
illegal procedures in, 330
for members of House of Representatives, 269-70
proper, of Senators and Congressmen, 330
of Senators, 307
state manipulation of, 325
Electoral college, 524-26, 527
Electoral system, devising a new, 520
Electoral votes, 526-27
president of the Senate shall tally, 715
Electors, 521-22
to choose President and Vice President, 519, 523-24
President and Vice President shall not serve as, 526
shall cast their votes on same day, 527
vote separately for the President and Vice President, 714-15
Eleventh Amendment, 602-3, 713-14
Ellsworth, Oliver
on Articles of Confederation, 123
on Congress, time chosen for annual session of, 330
on constitution, need for new, 130-31
on constitutional limitation, 597
on governments, large, 297
on import duties, 375
on money, 420
on moral decay caused by weak government, 128
on the President, reelection of, 518
on separation of powers, 185
on slavery, 469
on taxes on exports, 482
on taxing powers, 377
on wars of the purse, 382
Emancipation, 466-67, 729-30. *See also* Slavery
Energy Resource Revolution, 3
England. *See also* British; Revolutionary war
Anglo-Saxon name for Britain, 54
expects United States to collapse, 112
Enterprisers, 204
Entrepreneurs. *See* Enterprisers
Enumerated powers, of Congress, 390, 406
Environment, 543
Equal protection, guaranteed by Fourteenth Amendment, 723
Equality of mankind, 28
Ethiopia
American trade with, 400
famine in, 766-67
Europe, and quartering of troops, 701
Ex post facto law, 476-77, 499-500
Excise tax. *See* Tax; Taxes
Executive, single, 510-13
Executive agreements, 254-55
Executive appointments, 554
Executive branch. *See also* Cabinet; President of the United States; State Department; Vice President
expansion of, into lawmaking, 252-57

power concentrated in, 509
"Executive Journal of the Senate," 337
Executive orders
Cleveland issues, 253
and *Federal Register,* published in 252, 254
and Founders, would be irrational to, 254
and U.S. Archives, filed with, 254
Executive power, vested in President, 510-12
Executive privilege, 559
"Executive Session," 337
Expansionist period, 211
Expansionists, Founders as, 769
Expatriation, 412
Export clause, 482
Export tax, 482. *See also* Tax; Taxes
Extradition of criminals, 632-33
under Articles of Confederation, 67
governor responsible for, 633

F

"Failure formula" of government, 509
Fair Labor Standards Act, 405
Fairfax Resolves, 145
"Fairness Doctrine," 403
Family, rights of a, 179
Famine, in Ethiopia, 766-67
Farewell Address of George Washington, 771-73
Farm production, decreased after Revolutionary War, 114
Fascism, 42
Fauquier, Frances, 19
Federal Aviation Agency, 404
Federal Communications Commission, 403
Federal court system
created in 1789, 229-30
and jurisdiction over the Constitution, 595
right of people to have, 433
Federal courts. *See also* Courts; Judges; Judicial system; Judiciary; Supreme Court
and civil rights cases, 577
jurisdiction of, 255, 583-607
power of, too great, 225
and social needs not met by states or Congress, 255
Federal crop subsidy programs, 539
Federal Drug Administration, 427
Federal Employees' Liability Act, 404
Federal government. *See also* Government
and alcohol, may enforce prohibition of, 748
Bill of Rights lists prohibitions against, 674
controversies between, and citizens, 601
exclusive powers of the, 182
lands held by, 458
limiting powers of the, 250, 491, 507
powers delegated to, 176, 509
spending of, 391
and state jurisdiction, 251-52
and states, dependent on, 640
supremacy of, 658
and taxation, 378
Federal lands, and right of Congress to exercise jurisdiction over, 458-59
Federal laws
and constitution, 594, 597
number of, should be limited, 250
and President, as administrator of, 562
as supreme law, 659
Federal officials
crimes of, 565
indictment or impeachment of, 284, 547
infidels as, 668
and treason, 547
Federal planners, 252
Federal Power Commission, 403
Federal programs, types of, 252
"Federal Register," 252
Federal Register Act, 254
Federal republic, 193, 265, 640. *See also* Republic
Federal Reserve System
issues fiat money, 498
and notes redeemed in silver or gold, 424
replaces national bank system, 424
Federal-state relationship, 183
Federal Trade Commission, 427
created in 1914, 214
investigates unfair business practices, 214
"Federalist Papers," 143, 226-27
Ferguson, Patrick, 100
Fiat money, 424, 498. *See also* Paper money
"Fifteen Resolves," 157
Fifth Amendment, 703-7
Filibuster, 367
Fines, in criminal cases, 711
Firearms, restricting, to the militia, 695
First Amendment, 675-90
Fiscal policies of Confederation America, mistakes in, 115-17
Fiscal reform amendment, 743
Fiske, John, 669
Five Nations of the Long House, 95
Flexner, James T., 106, 113-14
Floor leaders of the House of Representatives, 283
Florida
and Spain, 112
and the Union, admitted to, 635
Food-production miracles, American, 766
Ford, Gerald R., and grant of pardon to Richard Nixon, 544
Foreclosures of property, after Revolutionary War, 114
Foreign affairs, 487, 600, 607, 768-75. *See also* Treaties; State Department; War; War powers
Foreign commerce, regulation of, under Articles of Confederation, 69

Foreign diplomats, 488
Foreign relations, Founders' policy of, 561-62, 607, 770, 772-73
Forfeiture of citizenship, 415, 433
Fort Ticonderoga
fall of, 82
Henry Knox retrieves cannon from, 74
Founders. *See also* specific Founders by name
and alliances, policy on, 769
and anarchy and tyranny, 42
on Anglo-Saxon principles of law, 61
on an army, raising, 444
and Articles of Confederation, weaknesses of, 371
beliefs of, were shared in common, 10, 41
and bill of attainder, 475
on a Bill of Rights, 674-75
on Britain's parliamentary supremacy, 170
and Britain's constitutional system, 167
on British Parliament, 168
and checks and balances in Constitution, 187-91, 371
classical studies of, 61
and commerce, regulation of, 401
and common defense, 243
and common-law jury, 256
and the Constitution, miracle of, 5
and constitutional formula, 371, 675-76
and "constitutional money," 420
and constitutional protections, 256
and debt, 393
and debt currency, or bills of credit, 423
and economics, Adam Smith's ideas on, 202
and élected officials, dread of long-term, 755
and executive orders, opposition to, 254
as expansionists, 769
on family rights, 179
and federal government, limited, 182, 492, 507
and federal government, powers granted to, 491
and federal republic, 19
on federal republic, expansion of, 193
on foreign relations, 772-73
foreign relations policy of the, 770
and freedom, preservation of, 322
freedom formula of, 3
and government, fear of big, 210
and government, fear powers of, 570
and government, scale to measure, 42
and government, students of, 10
and human nature, views of, 4
and immigration to U.S., 412
and inflation, 117
and isolationism, 770
and judicial activism, opposition to, 255
and judiciary, overzealous, 571
and lawmaking, restraints on, 354
and lawmaking process, as sacred trust, 353
legacy of, 249
and legislative process, invent new, 361
and legislative principles in Constitution, 355
and long-term elected officials, dread of, 755
on minting money, 420
and mission, sense of, 7
and mixed government, creation of a, 191, 258
motto of, 250
"myths" of, 217
and "necessary and proper" clause, 459
on paper money, 420, 424
and People's Law under Israelites, 52
and political interdependence, 770-71
and political science, invent new system of, 165
and political science questions, seek answers to, 195
politics of, 61
and poor and needy, 202, 219-20
and population, as nation's greatest resource, 411
on population of American continent, 6
on presidential compensation, 531
and President's duties, 508, 537, 566
and prosperity economics, 199, 202
and religious equality, 679-80
and religious meetings in tax-supported buildings, 682-83
and republics, uniting of, 768
on rights of individual, 179
and Ruler's Law, 44-45
on separation of powers, horizontal, 186-87
on separation of powers, vertical, 177, 183-86
and socialism, opposition to, 217
standard of living, formula for increasing, 208
and standing armies, 503
on state responsibility, 178
on states as projection of the will of the people, 181
study of classics by, 61
success formula of, 202, 257, 768
and taxes, 372-73, 479
and union, need to keep intact, 111
on Vice President as President's successor, 758
and welfare, 220, 252, 390
and world freedom, 7
Fourteenth Amendment, 577, 721-27
Fourth Amendment, 701-3
Franklin, Benjamin
"Analogy of the Broad Table," 274
and "ancient principles," 41, 47
on assassination of leaders, 565-66
biographical summary of, 138-40
on compassion, "calculated," 219
and compassion, views on counter-productive, 219

and Declaration of Independence committee, 26
and defense, 383-84
on disfranchisement, 268
on education and freedom, 763
on House being directly accountable to people, 356
and John Paul Jones, 449
on judicial compensation, 591
on morality, need for in constitutional government, 53
and official seal, formulation of, 32
on paper money, 421
on peace, maintaining by preparing for war, 243
and peace negotiations with Great Britain, 139
and Pennsylvania Abolition Society, 140
and popular apathy, disgust with, 384
and prayer, in Constitutional Convention, 159-60
on President, compensation of, 532-33
as president of Pennsylvania, 139
on public servants, salaries for, 345
on religion, fundamental points in, 677
on remuneration for public service, 343-45
on Senators, citizenship requirement of, 310
signs the Constitution, 162
studies culture of Anglo-Saxons, 54
on war, 441-42
on welfare programs, 219
Fraunces' Tavern, Washington bids farewell to officers at, 108
Free enterprise. *See* Prosperity economics
Freedom. *See also* Liberty; Rights of citizens of the United States
as America's greatest export, 12
to assemble, 722
of association, 722
economic, 220
as a goal of mankind, 2
perils of, 111
of the press, 688-89, 722
of religion, 722
of speech, 688-89, 722
of speech of legislators, 347
steps to, 196-200
Freedom formula, America's, 3, 15, 767-68
Freedom Revolution, Constitution launches, 2
Freeholders, 268
Free-market economy
enemy of, 207
profits in, 208
after World War I, 216
Freemen, commonwealth of, 52
Freemen's Farm, battle of, 83-84
French
as allies of Americans, 91, 93
army of, led by Rochambeau, 102
capture British islands, 95
capture British redoubts, 103
fight battle of Savannah, 95
fleet, arrival of, 93
fleet seals off Yorktown, 103
government, in bankruptcy, 655-56
send ships and soldiers, 91
French Revolution, 42
Fugitives from justice, 632
governor responsible for extradition of, 633
Fur operations of British, 112

G

Gates, Horatio
and Benedict Arnold, countermands, 84
and Burgoyne, capture of, 85
and Camden, cowardice at battle of, 98
as commander, approved by Congress, 97
and Fort Ticonderoga, battle at, 82
and Washington, criticizes, 97
in Washington's camp on the Hudson, 114
"Gazette" becomes "Congressional Record," 229
General welfare, 387, 749-50
Congress to pass bills for, of entire country, 353
and the Constitution, as a goal of, 244
General welfare clause, 387-92
interpretation of, as of 1936, 255
George III
coercive acts of, 114
expects colonies to collapse, 112
orders all English-born men to serve in armed forces, 412
and treatment of American colonies, 24
Germantown, battle of, 89
Gerry, Elbridge
and Constitution, refuses to sign, 225
on election of President by popular vote, 524
on executive, single, 512
on export tax, 482
on judges, setting policy, 595
on oath to support federal Constitution, 666
on the President, infallibility of, 566
on President's duty to repel invasions, 440
on Senators, appointment of, 296
on state protection from federal encroachment, 459
on taxation with representation, 276, 356
Gitlow doctrine, 685
Gladstone, William E., on the Constitution, 9
Gold Reserve Act, 425
Gold standard, 424, 497
Gore, Christopher, 373
on military in peacetime, 446

on selecting federal juries, 618
on taxes, 375
Gorham, Nathaniel
chairman of committee of the Whole at Constitutional Convention, 157
on Congress, annual sessions of, 328
on court powers, 595
on excise taxes, 376-77
on insurrection in a state, 643
on judges, executive appointment of, 556-57
on judges' setting policy, 595
on tax on imported persons, 471
Goudy, William, 246
Government. *See also* Federal government
American system of, 4, 9, 168-69, 192
balanced, forming a, 46
big, Founders' greatest fear, 210
branches of federal, invade state jurisdiction, 251-52
constitutional, commitment to morality of, 53
and development of modern technology, 12
"divine science" of sound, 195
economic intervention, 209-17
extremes of, 42-44
federal, exclusive powers of the, 182
free, compared to a pyramid, 177
leaders, constant change in, 518
leaders, need to choose wise, 245
measuring, method of, 42
and money, appetite for, 375
officials, removal of, from office, 563
people as source of power in, 176-79, 233-35. *See also* People's Law
people to regain control of, 28
people rightfully have power over, 175, 176, 205
power given to, 43
power in, distribution of, 713
power of, 570
representative, and Moses, 50-51
restraint of, 566
and rights of people, violates, 28
seat of, access to, 722
self-evident truths are basis of American, 28
self-preservation of, 326-27
size of, 297
systems of, studied by Founding Fathers, 3, 10
and technology, development of, 12
Government, local, 51, 178-81, 480. *See also* Separation of powers, vertical
Government employees
may not be elected to legislature, 350-51
Government ownership of industry, 216
Government intervention in the national economy, 207, 210, 216, 217
Graduated poll tax, 477-78. *See also* Tax; Taxes
Grand jury. *See also* Jury
procedure of, 703-4
retained by federal government, 704
Grayson, William, on abuse of power, 188
Great Britain. *See* British; England; Revolutionary War
Green Mountain Boys, and battle at Bennington, 83
Green, Nathanael, 97
Guam, acquired by U.S., 636
Guilford Courthouse, battle of, 101
Gun control, 695

H

Habeas corpus, writs of, 472-74, 722
Hale, Nathan, capture of, 77-78
Hamilton, Alexander
on agriculture, federal authority over, 186
and ambassadors, ministers, consuls, 607
and amendment to redress abuse of power, 579
on America, state of, 118-19
on America's neglect of soldiers, 96
on amnesty power of the President, 546
and "ancient principles," 41
on appointments, 555
on armies, 448
on Articles of Confederation, 120, 172-73
and Bank of the United States, 424
on a Bill of Rights, 674
biographical summary of, 142-43
on British system of government, 167-68
and the central government, urges strengthening of, 133
on checks and balances, 188
on citizenship, universal, 632
on common market, 409-10
on confederations in Europe, 171-72
on Congress, limited power of, 593-94
on Congress needing authority, 461-62
on Congress refusing to call convention, 649
on Constitution, amendments by states, 256
on Constitution, interpreting, 251
on Constitution as standard for laws, 596
at the Constitutional convention, 142-43, 159
and constitutional convention, proposes, 135
on constitutional law, 594
on controversies between the nation and its citizens, 601
on court jurisdiction, 592, 602
on courts, 571
on debt of Revolutionary War, 381
on debt of U.S., 654
on defense, national, 382
delegate to the Annapolis Convention, 143
on diplomatic relations, 561-62

on direct taxes, 481
on disunion, 238
elected to Congress, 134
on election dates, 327
on electors, 523
and enumerated powers, 406
on excise taxes, 377
on executive, a single, 510-11
on federal courts, 596
on federal district courts in states, 584-85
on federal intervention during insurrections, 644
and *Federalist Papers*, 143, 227
on general welfare, 387-88
on general welfare clause, 244
on government, self-preservation of, 326-27
on governmental authority, 185
on *habeas corpus*, 474
on impeachment, 315, 587
on judges, compensation for, 591
on judicial independence, 586, 587
on judicial will, 595
on judiciary, authority of, 600, 606
on juries for civil cases, 619-20
on law, supremacy of, 660-61
on laws, scrutinizing in terms of Constitution, 251
on laws, uniformity of interpretation of, 597
on legislation, danger of hasty, 260
on legislatures, power of convening, 560
on legislatures amending the Constitution, 648
on liberty, may need to be sacrificed for safety, 237
on the "madness of tyranny," 301
on military, financing of, 382
on military-enforced requisitions, 374
on military in peacetime, 447
on militia, 448, 453-54, 540
on money, 378, 495
on naturalization, a federal responsibility, 413
on paper money, 495
on pardons, 545
on poll tax, 478
on power given to government, 44
on power to act commensurate with responsibility, 461
on President, compensation of, 531-32
on President, limited tenure of, 515-17
on President, popular election of, 520-21
on President's handling of diplomatic relations, 561-62
on presidential command of state militias, 540
on presidential nomination of officers, 553
on presidential power of appointment, 558
on presidential power to choose subordinates, 554-55
on presidential veto, 361
on representatives, ratio used in allocating, 279
in Revolutionary War, 103, 143
on rights being in danger, 246
as Secretary of Treasury, 229, 388
on Senate, importance of, 259-60
on Senate as a court of impeachments, 316
on Senate confirmations, 554
on Senate term of office, 301-2
on Senator as an agent for the Union, 293
on state constitutions, 299, 663
on state legislatures, 300
on state militias, 540
on state support of Congress, 125
on states, federal jurisdiction over cases between, 602
on states, independent powers of, 659-60
on states ignoring decrees of Congress, 123
on states taxing each other, 409
on states treating each other like foreigners, 124
on suits against states, 603
on Supreme Court, appellate jurisdiction of, 613
on Supreme Court involvement in cases in which a state is a party, 607
on taxes, 377, 378
on taxes, need for, 374-75
on terms of office, 305-6
on treaties, federal jurisdiction over, 599
on treaties, states' violations of, 598-99
on treaties, union of executive/legislative powers in, 552-53
on trial by jury, 616
on union, advantages of a strong, 236
and United States, early dangers to the, 243-44
on vertical separation of powers, 183-84
on war, strong union needed to prevent, 236
on Washington's staff, 143
on welfare clause, 388
at Yorktown, 143

Hamilton, Henry, 94

Hamiltonian doctrine, Corwin on, 388

Hancock, John, supports the Constitution, 227

Harcourt, William, captures Charles Lee, 78-79

Harding, Warren G., on states' self-reliance, 391

Harrison, William Henry
catches pneumonia during inauguration, 751
on limitation of representation, 279-80
on limited terms of office, 305

Hartley, Thomas
on ascent of man, 199-200
on congressional power to contract and pay debts, 380

Hatch, Orrin G., on gun control, 695

Hawaiian Islands, made territory of United States, 636
Health, federal establishment of standards of, 256
Heath, on slavery in new states, 469
Henry, Patrick
  and Bill of Rights, objects to lack of in Constitution, 225
  on Christian churches, strengthening, 680
  and George Rogers Clark, 94
  governor of Virginia, 94
  grants right to make grants-in-aid and withhold funds, 389
  Jefferson influenced by, 20
  on jury of peers, 617-18
  on power corrupting even good men, 246
  on the right to bear arms, 695
  on suspicion as a virtue, 246
Heritage, moral responsibility to preserve American, 386
Hessians, plunder New Jersey, 81
Hill, Whitmill, 480-81
Holmes, Abraham
  on juries for civil cases, 619
  on jury of peers, 618
Hooker, Thomas, 309
Horizontal separation of powers, 186-87. *See also* Checks and balances
Hours of Service Act, Supreme Court ruling on, 404
House Calendar, 365
House journals, publication of, 336-37
House Parliamentarian, 284
House of Representatives. *See also* Congress; Representatives
  accountable to people, 355-56
  age requirements of a member of, 270
  and appropriations, power over, 193
  in Articles of Confederation, no provision for, 258
  bill introduced into, 363
  calendar of, 365
  chaplain of, 284
  citizenship requirement of a member of the, 271
  clerk of, 283
  committee chairmen of, 283
  debate in, limiting, 367
  doorkeeper of, 283
  election of members of, 264-67, 269-70
  floor leaders of, 283
  impeachment charges, authority of, to bring, 284, 563
  and a journal of proceedings, 336
  limit to length of service, 304-6
  majority rule in, 332, 338
  meetings of, at designated location, 340
  members of, authority to expel, 335
  and officers and clerks, 283
  population represented in, 258, 279
  postmaster of, 284
  Powell expelled from, 335
  and President, process of choosing, 716
  President may call special session of, 560
  presidential veto power over, 295
  punishment of members of, for disorderly behavior, 334
  qualifications of candidate for, 272
  refuses to seat Berger, 331
  and revenue, 355
  rules and proceedings, must determine own, 334
  rules committee in, 365-66
  and Senate, sharing funds with, 361
  sergeant at arms of, 283
  and Speaker, 282, 530
  turnover in, 445-46
  vacancies in the, 281
  voting for candidates for the, 267-68
House Resolution 3321, 740
Howe, Richard
  commands British fleet, 76
  resigns command, 92
Howe, William
  and battle at Trenton, 79
  orders evacuation of Boston, 75
  resigns command, 92
Hudson River, Washington's camp on the, 114
Hughes, Charles Evans, 749
Human nature, Founders' views of, 4
Huntington, Samuel, on America's government, 194

I

Idaho
  gives women right to vote, 749
  percentage of federal lands, 459
Illegal aliens, 414
Immigration, 411-14
Immigration and Naturalization Acts, 412-13
Immigration and Naturalization Service, 413
Immunity, congressional, 346-47
Impeachment, 285, 314-18, 564-65
  Chief Justice to preside over presidential hearings of, 316
  conviction requires two-thirds majority of Senators, 317
  and criminal charges, 318
  federal officials, against, 284-85
  House of Representatives to bring charges of, 284-85, 563
  of judges, 587
  nonpardonable, 547
  reprieve or pardon in case of, 546
  of President, Vice President, and civil

officers, 563-64, 566
punishment for conviction of, 317
Senate shall hear, 314
Senate under oath when trying cases of, 316
Vice President as judge of, 315
Import duties, 375, 501. *See also* Duties
Importation, 400
Importation of slaves, 649
Imposts. *See* Taxes
"In kind," taxes collected, 117
Inaugural date, 538
Income tax, 738-43
Indian Affairs, Bureau of, 410-11
Indian Citizenship Act, 411
Indian relations, of British, 112
Indian Removal Act, 410
Indians
and census, 274
and British, 94
and Congress, right of, to regulate trade with, 410
massacres by, 94
and *parens patriae,* 411
after Revolutionary War, 112
and right of, to remain members of their various tribes, 724
Indictment, 704
Indirect taxes. *See also* Tax; Taxes
and direct, important to distinguish between, 372
explanation of, 478
must be levied uniformly, 378
Industrial revolution
and efficiency of bigness, 210
made possible by freedom, 2
Industry, government ownership of, 216
Infamous crime, 703
Infidels in high office, 668
Inflation, 116-17
during the Revolutionary War, 114
impact of, on character of nation, 117
promoted by increasing money supply, 116
Initiative referendum, 640
Insurrection in a state, 643-44
Intelligence Oversight Board, 543
Interdependence, worldwide, 770
Internal Revenue Service, and right to privacy, 702
International law, right of Congress to define, 436
Interstate Commerce Act, 403
Interstate Commerce Commission, 252, 402-5
and congressional right to regulate, 400
and jurisdiction, 404
power to regulate, 69
and regulation of all transportation systems, 404
and regulation of wire and radio communication, 404
Interstate communication, regulation of, 403
Interstate rights and responsibilities, 67
Interstate transportation, regulation of, 210
Invasion, federal protection of states from, 642
Inventors, and right to have patents, 430
Iredell, James
on amending the Constitution, 645
on America's government, 194
on appropriations period, 445
on autocracy or monarchy, 645
on bicameral legislature, double security of, 260
on Congress, a quorum in, 331
on electors, choosing, 521
on electors casting votes on same day, 527
on federal laws as supreme laws of every state, 659
on government, extremes of, 43
on *habeas corpus,* 474
on House of Representatives, accountable to people, 355-56
on human nature, the universal frailty of, 246
on impeachment, 285
on impeachment, nonpardonable, 547
on impeachment of the President, 564
on legislative process, 361
on oath to support Constitution, 664-65
on pardons, power to grant, 545
on the President, the power of, over the military, 540
on the President and his Cabinet, 541
on the President's being subject to law, 565
on religious tests as qualification for office, 667-68
on secrecy for security reasons, 337
on Senate, equality in, 650
on Senate, qualities needed in, 302
on Senate as guard against consolidation, 301
on Senate as representing states, 260
on Senators, compulsion to cooperate, 355-56
on Senators, election of, 307
on separation of powers, vertical, 183
on slaves, preventing them from escaping to a free state, 634
on state governments, 299
on states failing to protect Congress, 456
on trial by jury, 617
on veto power of the Senate, 295
Iroquois, towns attacked by British, 95
Isolationism, 770
Israel
ancient history of, 48
"ancient principles" found in, 27
organization of ancient, 51
People's Law in, 47
representative government found in, 32

Israelites
branch of, included in Anglo-Saxons, 55
and code of justice, 53
Constitution modeled after system of, 53
and land ownership, 53
and People's Law, 49-53
represented on seal of the United States, 32

J

Jackson, Andrew, 373, 390
Jackson, William, 157
Jarvis, Charles, on amending the Constitution, 645
Jay, John
and "ancient principles," 41
as Chief Justice of the Supreme Court, 230
on confederations, problems of loose, 236
on congressional power to correct state's neglect, 324
on electors, 523-24
on the federal government, supremacy of, 658
and *Federalist Papers,* 227
on freedom, conditions leading to establishment of, 5
on the jury, independent authority of, 615
on national security, 551-52
on the President, maturity of, 528
Jefferson, Peter, 16
Jefferson, Thomas
on America as pioneer of world freedom, 7
on America's responsibility to the world to remain united, 238-39
and "ancient principles," 4, 28, 38, 41, 42, 47, 61
on Anglo-Saxon laws, 56
and Anglo-Saxon laws, admiration for, 54
and Bank of the United States, 424
and bill for "Establishing of Elementary Schools," 676
biographical facts of, 16-18
and Congress, delegate to, 25
on Congress, power of, 393
and Congress, resigns from, 34
on the Constitution, 195, 227, 570, 576-77
and constitution of Virginia, 37
and Constitutional Convention, 137
on constitutional law, 594
on constitutional supremacy, 594
and the Continental Congress, 24
and court usurpation of authority, 256
on courts, need for amendment to curb, 579, 589-90
on courts' subverting the Constitution, 588-89
on debt, 393-95
and Declaration of Independence, 28, 466
on education, importance of, in a republic, 234
education of, 17-20, 22, 27
and excise tax, 373
on federal courts' jurisdiction over states, 588
on federal laws, limited number of, 250
on Founders' sense of mission, 8
on general welfare, as a goal of the Constitution, 244
on general welfare clause, 244, 387
and George Wythe, 19, 146
on government, 43
on government, duty of, toward the people, 234
on government controlled by the people, 233
on governmental services, distribution of, 177
graduates from College of William and Mary, 18
on grievances, redress of, 689-90
on judges, limited terms for, 590
and judicial review, 573
on judiciary as a guardian of the Constitution, 571-72
on justice, 241
on justice as an inborn sense, 240
law practice of, 22
on laws, form of written, 250
on magistrates, criminal and civil jurisdiction of, 615
on majority rule, 266
marries Martha Wayles Skelton, 21
minister to France, 227
on money, sound, 497-98
and national debt, opposition to, 393
and patent letter, signs first, 432
on patents, 431
and Patrick Henry, 20
on the people, discernment of, 233-34
on the people as foundation of government, 233
on the people as the only safe depository of power, 233
on people's instinct to preserve freedom, 233
and People's Law, 46
and power, the distribution of, 713
as President, 538
on public debt, 394-95
reforms of, 37
on religion, 681, 684
and religious instruction at state schools, 683
on religious meetings in tax-supported public buildings, 683
on republic as means to secure equal rights, 266
on a republic, foundation of, 266-67

and Revolutionary War, 24
as Secretary of State, 230
on self-government, 178
on separation of church and state, 681-82
on separation of powers, horizontal, 187
on separation of powers, vertical, 183
and slavery, elimination of, 466
and slaves, emancipation of, 466, 729
studies Anglo-Saxons, 33, 54
on Supreme Court's interpretation of Constitution, 576-77
and tax system of early United States, 373
and trade with Europe, 400
and Virginia, reforms in, 37
and Virginia as a model state, 34
and Virginia Constitution, 25
in Virginia House of Burgesses, 20
in Virginia legislature, 466
on war, 441, 442
on Washington, 106
Jeopardy, double, protection against, 705
Jeremiah, reprimands Israelites, 53
Johnson, Andrew
and amnesty, proclamation of, 726
on legislatures declaring effect of legislative acts, 631
on political societies, 274
on Senators, election of, 746-47
on states, creating new, 637
on taxes, 375
on treason, 623
Johnston, James
on bankruptcy of United States, 124
on Congress, restrictions on, regarding religion, 668
on Congressmen as answerable to constituents, 564
on Constitution as supreme law of the land, 658
on duties and excises, 480
on electors, 521
on impeachment, 565
Joint Resolution of House and Senate, 360
Jones, John Paul, 449
Josephus, on Moses, 48
"Journal of the House," 338
sensitive matters excluded from, 337
Judges
compensation of, 591-92
and Constitution as supreme law of the land, 662
executive appointment of, 555-57
to hold office during good behavior, 586
impeachment of, 587
jurisdiction of, 615
life tenure of, 586
limited terms for, 590
and pardon for treason, 547
and setting policy, 595
state, 662-63
Judicial activism, 255-56
Judicial administration, 255
Judicial legislation, 255
Judicial oath, 664
Judicial power
administration of, 592
of the United States, 713
Judicial review, power of, 570-77, 597-98
Judicial supremacy, 575
Judicial system, national, 583
Judiciary, 586-87, 595, 600, 606. *See also* Courts; District courts; Federal courts; Judges; Supreme Court
checks and balances against overzealous, 571-72
and Constitution, guardian of, 572-76
compensation of the, 591-92
national, and division of labor with state judiciaries, 583
national, not provided in Articles of Confederation, 583
of the Supreme Court, 569-81
Junkets, criticism of, 364
Jurisdiction, 614
over federal lands, 458
joint, cases involving, referred to federal courts, 596
Jury, 257
authority of, 615
in civil cases, 619-20, 710
common law, 190-91, 256, 257, 614-15
federal, 618
grand, 704
of peers, 617-18
right to a trial before an impartial, 707
trial by, 614-20
trial by, at common law, 710
trial by, delayed, 241
Jury system, of Anglo-Saxons, 58
Justice
channels of, in Anglo-Saxon law, 59
and Constitution, as a goal of, 239-41
Justices, number of, in Supreme Court, 584

K

Kaufman, Irving Robert, on Rosenbergs' sentence, 625
King, Rufus
on candidates for office, 517-18
on Congress securing permanent location, 455
on courts, economy of operating lower, 434
on debts of states, as included in U.S. debt, 657
on judges' setting policy, 595

on ratification of the Constitution, 669
on Senators, term of office of, 303
on states, protection of, against federal encroachment, 459
on taxation and representation, 277
on treason as applying only to United States, 623
on tribunals, establishment of inferior, 614
King's Mountain, battle of, 100
Knox, Henry
and Fort Ticonderoga, sent to retrieve cannon from, 74
as Secretary of War, 229
in Washington's camp on the Hudson, 114
Korean conflict, 440

L

Labor regulations in interstate commerce, 404
Lafayette, fights for Americans, 92
Lake Champlain, and British refusal to withdraw from, 112
"Lame duck" Congresses, 750
Lands. *See* Federal Lands
Langdon, John, on constitutional money, 421
Langdon, Samuel, on responsibility of people to maintain American system, 10
Lansing, John, on miracle of Constitution, 260
Law
how a bill becomes a, 357-68
not used to destroy equality and justice, 355
opposite systems of, 44
unconstitutional, 252-53
void if it violates laws of nature and God, 354
Lawmaking. *See also* Congress; House of Representatives; Senate
authority of, vested exclusively in Congress, 251
and delegation of power to government, 354
expansion of executive branch into, 252
Founders' restraints on, 354
of judiciary, 255
process of, Founders regard as sacred trust, 353
Laws, form of written, 250
Leaders, need to choose wise, 245
League of Nations Treaty, 548-49
Lee, Charles
and attack against British, 92
captured, 78-79
court-martialed, 93
delays march to assist Washington, 78
exchanged as prisoner, 92
mistakes of, cost American victory at Monmouth, 93
plots betrayal of Washington, 92
Lee, Richard Henry
on paper money, 494
on publication of house journals, 336
resolution of, in Congress, 26
on the right to bear arms, 695
Legislation, reviewed by President, 357
Legislative appointments, 555-56
Legislative authority, 354
Legislative branch, election to, 275
Legislative counsel, 363
Legislative principles and the Constitution, 355
Legislative process, 353-69
Legislative Reference Service, 363
Legislators
and civil offices, 347-50
civil suits against, 346
compensation for, 341
Legislature
acts of, 631
bicameral, 260
national, organization of, 321
state, to appoint Senators, 293-301
"Letters of a Farmer in Pennsylvania," 150
Letters of marque and reprisal, 443
Lever Act, 748
Liberty, 237. *See also* Freedom
as a goal of the Constitution, 245-47
Liberty Bell, proclamation on, 52
Library of Congress
Jefferson's library forms a nucleus of, 22
provides Legislative Reference Service, 363
Lincoln, Benjamin
accepts British surrender, 104
taken prisoner by British at Charleston, 97
Livingston, G., on the universal frailty of human nature, 246
Livingston, Robert
and Declaration of Independence committee, 26
on recall, power of, 292-93
on Senators, term of office for, 302
on states, requisitions from, 373-74
on taxes, direct, 480
on taxes, excise, 376
on terms of office, 305
on union, 122
on war, power to declare, 382
Lobbyists, 364
Locke, John
on divine right of kings, 233
and essays on civil government, 233
on legislative authority, delegation of, 354
and mixed government, 258
as political philosopher, 258
Long, Huey, 367
"Lord's Prayer," Supreme Court and, 687
Lorimer, William, purchases Senate seat, 747
Louisiana Purchase, 635

M

McCrea, Jane, 83
MacDonald, John A., on the Constitution, 9
McDougall, Alexander, on army committee to Congress, 114
McHenry, James, 483
Machine Revolution, 2, 210
McKean, Thomas
on abolition of slavery, 465
on congressional power over state procedures, 324
on copyright and patent law, 430-31
on debts, unpaid, 380
on expenditures, accountability for, 485
on judicial compensation, 592
on money, 421, 495
on slavery clause, 468
on treaties as the supreme law, 658
on vice president as presiding officer in Senate, 311
on war powers granted to Congress, 445
McKinley, William, 253
Maclaine, Archibald
on *citizen* versus *subject,* 606
on Congress, 460
on Congress, expulsion from, 564
on crimes of federal officers, 565
on electors, 521
on federal laws as supreme law of the land, 659
on Founders proposing constitution for the people, 234
on general welfare, 387
on government by the people, 176
on impeachment of federal officials, 563
on impeachments, Vice President as judge of, 315
on money, paper, 494
on oath to support federal Constitution, 665
on presidential power to fill vacancies, 558
on treaties as an extension of constitutional power, 661
Madison, James
on amending the Constitution, 646
and amendments, proposed, 226
on America as pioneer of world freedom, 7
on the American confederacy, glory of, 165-66
and "ancient principles," 41
on appropriations, 356
on arms, right to keep and bear, 698
on army, 448
and Articles of Confederation, 154
on Articles of Confederation, weaknesses of the, 137, 172
on bank notes, 495
and Bank of the United States, objects to, 424
on bankruptcy laws, 416
on Bill of Rights, 674-75
biographical summary of, 140-41
on census, 276-77
on checks and balances, 188
on a citizen suing a state, 603
on coinage, 495-96
on commerce and trade having a unifying influence, 238
on common market, 501
on Congress, authority of, 460
on Congress, expulsion from, 335
on Congress, incentive to run for, 348-49
on Congress, independence of, 297
on Congress not being subject to host state, 456
on Congressmen, power of, to fix own salaries, 341
on the Constitution, 234-35
and Constitution, miracle of the, 5
on constitutional amendments, 644-45
and Constitutional Convention, 135-37, 140-41, 157, 159
and the Continental Congress, 141
on controversies between the nation and its citizens, 601
on court cases, final jurisdiction of, 614
on courts being created or abolished as needed, 434
on crimes outside state boundaries, 434
on debt, moral obligations of U.S., 656
on democracy, the weaknesses of, 265
on district court decisions, 585
on disunion, 238, 470
on domestic tranquility, 242
on elected officials voting themselves jobs, 348
on elections, 267-70, 327-28
on electoral college, 524-26
on equality of representation in Senate, 291, 650
as "the Father of the Constitution," 226
on federal government, limiting powers of, 250, 507
on federal government, powers delegated to, 509
on federal intervention, in state concerns, 643
on federal lands, 459
on federal powers, 176
on federal town, need for a, 456
and *Federalist Papers,* 227
on freeholders, 268
on general welfare, 387
on general welfare clause, 244, 390
on government and doctrine of unlimited powers, 406
on house journals, 337
on impeachment, 285, 564

and Jefferson's reforms, 37
on judges, appointment of, 556-57
on judicial review, 597
on legislative appointments, 556
on majority rule, 332
on military, financing of, 382
on miracle, need for a, 111
on money as an effective weapon, 356
on naturalization, 413
on "necessary and proper" clause, 462
on oath to support federal Constitution, 665
on patronage, the lure of, 348
on President, to be appointed by Congress, 522
on President's duty to repel invasions, 440
on religion, preferring one over another, 680
on religion and government, 681
on republican government, 641
on republics, the advantages of, 266
as secretary/historian of the Constitutional Convention, 157
on Senate, 291-92, 295, 303, 315
on Senate, equality of representation in, 291, 650
on Senate and taxation, 357
on senatorial trust, 309
on Senators, 297-98
on Senators, state compensation for, 342-43
on separation of powers, vertical, 185
on slavery clause, 468
on slaves and state representation, 277
on state constitutions, as subordinate to federal, 662-63
on state governments, 298
on state militias, 451-52
on state records, 631
on tax, direct, 479
on taxation, 479
on taxes as based on population of states, 479
on term of office, 269-70
on treaties, 598, 660-61
on trial by jury, 619
and tyranny, definition of, 42
on union, importance of size of, 239-40
on the United States, as a national common market, 408-9
on the United States, weakness of, 126
on veto power, 363
on Vice President as presiding officer in Senate, 311

Magna Charta, 197
and declaration of rights, 472

Mail, 428-29

Majority rule, 266
in the House, 332, 338

Mankind,
equality of, 28
three goals of, 2

Marbury v. Madison, 575

Marque and reprisal, letters of, 433, 492

Marshall, John
on appellate jurisdiction of Supreme Court, 612
on judiciary as guardian of the Constitution, 572-76
on states, disputes involving interests of, 605
on states, federal jurisdiction over cases between, 602
on states, suits against, 603
on taxes on land and property, 479
on unconstitutional laws, 597

Martin, Luther
on commerce, regulation of, 484
on court's power of veto, 595

Marx, Karl, on profit, 208

Mason, George
and Bill of Rights, 225
and Bill of Rights of Virginia, 145
biographical summary of, 145-46
and Cabinet, lack of provisions for, 225
on Congress, annual sessions of, 329
on Congressmen, age of, 270
on Congressmen, federal compensation for, 342
and Constitution, refuses to sign, 224-25
on court's power of veto, 595
on export taxes, 482-83
and Fairfax Resolves, author of, 145
on federal courts, 225
on federal intervention in state concerns, 643
on House, citizenship requirement of members of, 271
on interstate commerce and inspection provision, 502
on majority rule, 332
on power, human propensity to expand, 247
on President, election of, 524
on President's duty to repel invasions, 440-41
on ratification of Constitution, 669
and ratification of the Constitution, opposes, 146
on representation by district, 272
on Senate as a defense against encroachments of federal government, 297
on Senate becoming an aristocracy, 356
on Senate taxation, 357
on slavery, origin of, 467
on state militia, 451
on tax collection, 481
on tax on imported persons, 471
on treason, 623
on treaties as contracts, 661
on veto power, 362
in Virginia House of Burgesses, 145

in Virginia House of Delegates, 146
Massachusetts
levies poll taxes, 114
pays debts in gold or silver, 114
supreme court of, 115
Mercer, John Francis, 349
Metric system, 427
Mexican territory, purchased by U.S., 636
Michilimackinac, British refuse to withdraw from, 112
Military, 374, 445-47, 503. *See also* Army; Defense, national; Militia; Navy; War powers
and civil authority, subordinate to, 449
Congress to regulate, 444, 449
financing the, 382
and land captured by, 443
oath, 664
officers of, commissioned by President, 562
President, commander in chief of, 449
Military dictatorship, 44
Military revolt, 106, 322
Milites, 56
Militia, 453-54. *See also* Military; State militias
in Articles of Confederation, 67
President has exclusive authority over, 540
President is commander in chief of, 539-40
President shall appoint officers of, 562
state, 447-48, 450-52
Monarchy, 645
advantages and disadvantages of, 191-92
definition of, 44
Monetary system, 421-22, 425, 493-94, 498. *See also* Paper money
and the Constitution, 419
and Continental currency, 117
present, is unconstitutional, 426
and right of Congress to establish gold standard, 497
Money, 378, 420-26, 493-98, 501. *See also* Monetary system; Paper money
Founders' position on, 421
government's appetite for, 375
minting, 420
as a weapon, 356
Monmouth, battle of, 92-93
Monopoly, 209
and Sherman Anti-Trust Act, 214, 404
Monroe, James
and commerce, regulation of, 401
on inferior court system, 433
vetoes Cumberland Road bill, 390
wounded at Trenton, 79
Monroe Doctrine, 769
Montana, percentage of federal lands, 459
Montesquieu, Charles de, 61, 258
Montgomery, Richard, 72
Monticello, home of Thomas Jefferson, 21
Morality
of community, and right of government to intervene, 207
fundamental to People's Law, 53, 676
public, 207
responsibility of a state to intervene in issues of, 181
Morals, distinction between private and public, 181, 207
Morgan, Daniel, 71, 72
defeats Tarleton, 101
frontiersmen of, fight British, 84
Morison, Samuel Eliot, on delegates to the convention, 137
Morris, Gouverneur
and army committee to Congress, 114
biographical summary of, 143-44
on Congress, power to compel attendance at 333
and Constitution, rewrites, 161
on despotism without a constitution, 129
on electoral college, 527
on executive, a single, 512
and finance, writes essays on, 144
on impeachment, 285
on international law, 436
on judicial compensation, 591
on leadership, constant change in, 518
on legislative appointments, 556
on money, 420
and Preamble, 230
on President, congressional appointment of, 522
on President, limited term of, 517
on President as guardian against legislative tyranny, 363
on presidential impeachment for treachery, 566
on presidential nominations, 554, 555
on the Senate as a court of impeachment, 459
on senatorial appointments, 556
on state protection against federal encroachment, 459
on states, creating new, 637
on states, protection of, 501
on tax on imported persons, 471
on treaties, 661
Morris, Robert
and army committee to Congress, 114
and Bank of North America, 145
biographical summary of, 144-45
and the Continental Congress, 144
and the Declaration of Independence, votes against, 144
as Senator from Pennsylvania, 145
Morristown, New Jersey
mutiny of American army at, 101
Washington forced to remain in, 81
winter quarters of American troops, 96-97

Moses
history of, 48-50
and People's Law, 49-51
and representative government, 50-51
and Ruler's Law, 49
and self-government, 51
Moultrie, William, 76
Mutineers, march to Philadelphia, 101
Mutually Assured Survival, 773

N

Napoleon, and French Revolution, 42
Natchez, Mississippi, Spanish garrisons of, 112
National Bureau of Standards, 427
National debt, 380-81, 383, 392-95, 397
National defense, 381-86. *See also* Army; Military; Militia; Navy; War powers
National Labor Relations Act, 405
National security, 551-52
National Security Council, 543
National Guard, 453-54
Nationalizing clause of the Constitution, 630
Natural law, 354-55
Naturalization, 411-14
oath of allegiance for, 414
right of Congress to regulate, 411-13
Navy. *See also* Defense, national; Military; War powers
Congress to provide and maintain a, 449
President is commander in chief of, 539-41
role of, in Revolutionary War, 449
standing, under Articles of Confederation, 67
Neal, James, on states outlawing importation of slaves, 469
"Necessary and proper" clause, 459-62
Negroes. *See* Slavery
Nevada, percentage of federal lands, 459
New Deal, 254
New England, campaign to isolate, 81
New Hampshire volunteers, 83
New Jersey, brutality of British occupation of, 81
New Jersey Plan, 158
New Mexico, percentage of federal lands, 459
New Orleans, held by Spain, 112
New York
battle of, 33
British assault on, 76-78
calls for a constitutional convention, 134
Washington plans attack on, 102
Williams sends reinforcements to, 101
Newburgh Crisis, 106
Niagara, British refuse to withdraw from, 112
Nicholas, Wilson
on debt, national, 656
on the election process, state manipulation of, 325
on federal crimes, 435
on governmental power, 43
on import duties, 375
on "necessary and proper" clause, 459-60
on President's power of pardoning, 546
on separation of powers, vertical, 184
on state constitutions, 662
on state militias, 451
on taxation, 356, 375
Nicola, Lewis, 322
encourages Washington to be king, 105
Nineteenth Amendment, and women suffrage, 749-50
Ninth Amendment, 712
Nixon, Richard M., received pardon from Gerald Ford, 544
Nobility, 486, 500
Nonresidents, 632
Northern states, agree to commerce clause, 467
Northwest Ordinance, 676
and federal territories, management of, 638
and slavery in new states, 467
and states, admission of new, 458, 635
Norton, Thomas James, 416

O

Oath of allegiance, for naturalization, 414
Oath, elected officials take, to support Constitution, 538, 663-66
Occupational Safety and Health Administration, 701
Office of Administration, 543
Office of Consumer Affairs, 427
Office of Management and Budget, 543
Office of Policy Development, 543
Office of the United States Trade Representative, 543
Ogden, Mathias, on army committee to Congress, 114
Ogdensburg, British refuse to withdraw from, 112
O'Hara, Charles, sent by Cornwallis to surrender, 104
Oklahoma v. Civil Service Commission, 389
Oligarchy, definition of, 44
Olive Branch Petition, 66
Oregon, percentage of federal lands, 459
Oswego, British refuse to withdraw from, 112
Otis, James, protests writs of assistance, 703

P

Page, John, 18
Paine, Thomas, words of, inspire troops, 79
Panama Canal Treaty, 549, 638
Paper money, 116, 421, 494-96. *See also* Monetary system
as debt money, 423
as fiat or specie money, 423
Founders on, 420, 424
issued by Congress, 117
issued by states, 117
issued during Revolutionary War, 420
laws passed to use, 117
Second Continental Congress prints, 116
Pardons, President has right to grant, 544-46
Parens patriae, doctrine of, 179, 411
Parliamentarian of the Senate, 313
Parliamentary power, evolution of, 197-98
Parliamentary supremacy, 198
Parsons, Theophilus, 256-57
on common-law jury, 190-91
on Senators, election of, 307
on states having a veto in Congress, 123
on taxing powers of both federal and state governments, 377
on terms of office, 306
on usurpation, acts of, 616
Party whips, 283, 313
Patents
laws and conditions of, 432
rights of inventors to, 430-31
Paterson, William
and New Jersey Plan, 158
on proportional representation, 274
Patronage, lure of, 348-49
Peace, mankind is seeking, 2
Peace treaty, between British and United States, 107
Pendleton, Edmund
on appellate jurisdiction of Supreme Court, 612
on the Constitution as a proposal, 234
on courts as supporters of federal officers, 596
on federal intervention in state concerns, 242, 642
on government by the people, 176
on judicial system, 585
on "necessary and proper" clause, 460-61
on trial by jury, 620
Pennsylvania Constitution, and salaries for public servants, 345
"Pennsylvania Packet," published Constitution, 224
Peonage Act, 720
People, discernment of, 233-34
People's Law, 183, 197. *See also* Government, people as source of power in
of Anglo-Saxons, 47
in Declaration of Independence, 46
Israelites under, 49-53
morality fundamental to, 53
Moses and, 49-51
opposite to Rulers' Law, 44
power base for, 46
Persona non grata, 561
Petersham, Massachusetts, survivors of Shays's Rebellion flee to, 115
Petition, right of, 689-90, 722
Petition of Right, 472-73, 700-701
Philadelphia
British abandon, 92
Howe reenters, 88
Phillips, General William, sends British reinforcements to New York, 101
Phillips, William, on peacetime army, 446-47
Physiocrats, French, 215
Pierce, William, on election to legislative branch, 275
Pinckney, Charles
on aristocracy, 192
on balance of power, 191-93
biographical summary of, 152-53
at Confederation Congress, 152
on Congress, war powers of, 440
at Constitutional Convention, 152
on foreign ministers, 488
on government, American system of, 168-69
on governments then existing, 3
as minister to France, 153
on monarchy, 191-92
on monetary system, 493-94
and Pinckney plan, 153
on republic, 192
on Senate as selected by state legislatures, 297
on Senators, citizenship requirement of, 310
on slavery, abolition of in South Carolina, 469-70
and slavery clause, 470
and South Carolina House of Representatives, 152
and South Carolina Provincial Congress, 152
on taxation based on land value, 276
as a United States Senator, 153
Pinckney, Charles C.
biographical summary of, 152-53
on the Confederation, broken compact of, 124
on Europeans, potential attack by, 128
on impeachment, 547
on legislative appointments, 555
on legislative powers, balance of, 250-51
on paper money, 494
on President, reelection of, 514-15
on Senate representing states, 260

on slavery, 470
on treaties, Senate ratification of, 550
Pinckney plan, 153
Piracy clause, of Constitution, 434
Pirates, as stumbling block to foreign commerce, 434
Pitt, William, on the Constitution, 9
Plutocracy, definition of, 44
Pocket veto, 368. *See also* Veto
Police, standards imposed on, 256
Political freedom
America's greatest export, 220
preceded by economic freedom, 220
Political interdependence, Founders oppose, 770-71
Political parties, and first presidential election, 229
Political science, Founders invent a new system of, 165
Political societies, 274
Poll taxes. *See also* Tax; Taxes
graduated, 477-78
levied by Massachusetts, 114
prohibition against, 745
Pollock cases, 738
Polybius, 258
Population
John Adams on, of American empire, 6
as a nation's greatest resource, 411
Representatives apportioned by, 273-75
Ports, 483, 503
Post Office Department, 420, 543
Postal system, 428-30
Postmaster of the House of Representatives, 284
Powell, Adam Clayton
expelled from House of Representatives, 335
House excludes, 331
Power, corrupting influence of, 246-47
Prayer
Franklin's plea for, in Constitutional Convention, 159-60
in schools, Supreme Court outlaws, 687
Preamble, 230-47
and the blessings of liberty, 245
and defense, 243
and the general welfare of nation, 244
and government by the people, 233
and justice for all, 239
and more perfect union, 235
original, unacceptable to Committee on Style, 230
and peace, security, and domestic tranquility, 241
President of the United States. *See also* Executive branch
age requirement of the, 528
and ambassadors of foreign nations, 561
amnesty power of, 546
appointments of, 554-55
and appropriations of Congress, impoundment of, 539
and army, power to raise an, 444
and bills, review of, 359
and Cabinet, 541
candidate for, 528, 529
citizenship requirement of, candidate for, 528
as commander in chief, 449, 539-41
compensation of, 531-33, 534
and Congress, appointment by, 521-22
and Congress, may call special sessions of, 560
and Congress, may designate date of adjournment of, 560
and Congress, to select acting, 753
Congress may allow the, to resume his duties, 761
Congress may be advised if the, is unable to discharge duties, 759
Congress may provide for office of, 530
and Constitution, responsibility to uphold, 538
and diplomatic relations, 561-62
disability of, 745, 759
duties of the, 566
election of the, 160, 321, 520-21, 524
and electors, is chosen by, 519-26
electors shall vote separately for the, 714-15
executive orders of, 253
executive power vested in, 510-11
and federal laws, executor of, 562
and general welfare, 559
and House, chosen by, if no majority, 716
impeachment hearing against, 316, 563, 566
inaugural date of, 538
infallibility of the, 566
and invasions, duty to repel, 440
and law, subject to, 565
and legislation, 357
and legislative tyranny, a guard against, 363
and military, 540
maturity of, 528
and military officers, 562
as a native-born American, 414
oath of office of, 538, 663
office of, most powerful political office in world, 507
and officers of the U.S., appointment of, 508, 553, 558
and opinions of principal officers, 541
and pardons, 544-45
and pardons in impeachment cases, 546
powers and responsibilities of, 192, 537
reelection of, 513-15, 518
removal from office of, 563
responsibilities of, as set by Founding Fathers, 508

right of newly elected, to assume office in January, 751
and state militias, 450, 454, 540
and state of the union report, 559
tenure of a, 515-17
term of office of, 513-18, 745
and treaties, 548-53
unconstitutional activities of, 508-9
and vacancies, 558
vacancy in office of, 752
veto of the, 357, 361
Vice President shall replace if, is unable to fulfill term, 529-30
votes for, to be cast on same day, 327
and war powers, 360
President pro tempore of Senate, 313, 314
in line of succession to President, 530
Presidential oath, 663
Press, freedom of, 688-89, 722
Prevost, Augustine, 95
Price controls
and black market, 117, 210
and market, damage to, 209
as a political gimmick, 209
and poor, 209
on potatoes, 209
and profit, margin of, 210
and profit motive, 117
result of, 210
and shortages, creation of, 117
and society, corruption of, 117
on steel, 209-10
Price fixing, by state governments, 117
Princeton, Continental Army attacks, 80
Prisoners, right of Congress to regulate capture of, 443
Privacy, right to, 701-2
Private property, protection of, 706-7
Profit motive, 117, 208
Prohibition, 745
black market during, 754
enforcement of, 748
repeal of, 754-55
a statute rather than a principle of government, 748
Property, private, 706-7
Property requirement for voters, 268
Proportional representation, 273-74
Prosecutors, criminal, 708-9
Prosperity, mankind is seeking, 2
Prosperity economics
categories of work in, 204-7
competition in, 208-9
economic freedoms in, 207
Founders' concept of, 199, 202
governmental intervention in, 207, 209-10
profit system in, 208
supply and demand in, 215-16
Protection of life, liberty, and property, 723
Protection while in federal custody, 722
Protection while traveling abroad, 722
Public buildings, religious meetings in, 682-83
Public lands, 458-59
Publius, 227
Puerto Rico, acquired by U.S., 636
Punishment, cruel and unusual, 711-12

Q

Quartering of soldiers, 700-701
Quebec, American campaign against, 73
Quorum, in Congress
establishing a, 338
minority may call up, 333

R

Railroads, regulation of, 403
Rand, Howard B., on Constitution, 53
Randolph, Edmund
on appropriations, 484
as Attorney General, 142, 230
on Bill of Rights, lack of, 225
biographical summary of, 141-42
on Congress, fixing date of sessions of, 329, 330
on corruption and foreign influence, 487
on elections, 375
on *ex post* facto laws, 477
on executive appointments, 554
on export clause, 482
and "Fifteen Resolves," 157
on general welfare, 387
as governor of Virginia, 225
on *habeas corpus* clause, 474
on impeachment of the executive, 566
on legislatures not impairing contracts, 500
on oath to support Constitution, 665-66
on paper money, 495
and patent letter, signs first, 432
on President, term of office of, 514
and ratification of Constitution, 225, 669
on Senate, role of, 300-303
on Senate as a check, 291
on Senate corruption, 356
on Senators, appointment of, 308
on slavery clause, 467
on state compensation for legislators, 342
on state militia, 451
on taxation, 276
on treason, 623
as Washington's aide-de-camp, 141
Ratification of the Constitution, 154, 470
required by nine states, 668-70

story of the, 223-28
Ratification conventions, 226
Rawdon, Francis, 81
Read, George, on constitutional money, 421
Rebellion, internal, states to have federal assistance against, 642
Recall, power of, 292-93
Reconstruction, erodes concept of sovereignty in states, 746
Red China, and "enriched Marxism," 220
Referendum issues, 640
"Regulate," Supreme Court definition of, 402
Regulation of railroads, by Interstate Commerce Commission, 402-3
"Released time" for religious education, approved by Supreme Court, 686
Religion, 668, 678-79, 684, 722
  and the First Amendment, 675-88
  government intermeddling with, 680-81
  role of, in Founding Fathers' constitutional formula, 675-76
Religion in schools, 676-77, 683
  Supreme Court prohibits, 685-86
Religious education, and "released time," 686
Religious equality, Founders' campaign for, 679-80
Religious meetings in tax-supported buildings, 682-83
Religious test, none required as qualification for office, 666-68
Remuneration for public service, 343-45
Representation
  allocation of, 160-61
  by district, 272
  proportional, 273-74
Representatives. *See also* Congressmen; House of Representatives; Senators
  apportioned by population, 273-75
  civil offices, may not accept, 347-50
  compensation of, 341-45
  Congress limits campaign spending of, 323
  and election of, 330
  as electors, 526
  and employment by U.S. government, 350-51
  formula for allocating, 160, 273-75, 290, 724
  and harassment suits, 346
  and immunity from arrest, 346
  majority of, constitutes a quorum, 331
  qualifications of elected, 331
  right of newly elected, to assume offices in January, 750
  of states, original, 281
Reprieves, President has right to grant, 544
Reprisal. *See also* War powers
  definition of, 492
  right of government to issue letters of, 492
  and threats of, 504
Republic, 264
  advantages and disadvantages of a, 192, 266
  confederated, 167
  and equal rights, 266
  foundation of, 266-67
  free must unite to survive, 768
  hierarchy of a, 51
  kinds of, 166-67, 265, 657
  unitary, 167, 265
Republican form of government in states, U.S. must preserve, 639
Revolutionary War, 34, 70-105. *See also* Articles of Confederation; British; Washington, George
  armies of, forced to confiscate supplies, 117
  and Articles of Confederation, weakness of, 69
  beginning of, 24
  debt of, 381
  funding for, 116
  inflation during, 114
  and navy during, lack of, 449
  and peace treaty, 111
  and taxation without representation, as cause of, 378
Rhode Island
  and Constitutional Convention, 136
  and ratification of Constitution, 228
  Senate votes to cut off commercial relations with, 228-29
Rights, history of, 696-98
Rights, individual, 179
Rights of citizens of the United States
  of accused, to be treated as innocent until proven guilty, 239
  and aristocracy, not to have an, 486, 500
  to assembly, peaceable, 689
  to bear arms, 694-96, 699-700
  and capitation tax, not to have a, 477
  to citizenship in U.S. and own state, 721
  to a copyright of works, 430
  to due process, 723
  to elect Senators, 746
  enumerated in Constitution, do not exclude others, 712
  to equal protection, 239, 243, 723
  to a federal court system, 433
  and federal violations, to complain of, 722
  to freedom from slavery, 720
  to freedom, government protection of, 245
  to a *habeas corpus* hearing, 472
  and interstate commerce, to engage in, 722
  and interstate travel, to engage in, 722
  to import slaves, 466
  to be informed, 337
  to keep and bear arms, 694
  to law and order, 241
  to majority rule, 250
  not to be declared criminal by legislation, 475, 499
  to petition Congress, 689-90, 722
  to be secure in persons, houses, effects, 701-2

to security and peace, 241
to self-defense, 504
to taxation with representation, 355
to trial, a speedy and public, 707
to trial by jury, 499
unalienable, 28
to a union of states, 235
to vote at age eighteen, 762
to vote in national election, 722
to vote regardless of race, color, or servitude, 728
to vote without paying poll tax, 757
and the welfare of the people, 244
of women to vote, 749

Robber Barons, 211
Rochambeau, Comte de, 102
Rockefeller, John D., 213
Roosevelt, Franklin D.
elected President for four terms, 756
and gold, turned in to Federal Reserve, 424
and Justices, attempts to increase number of, 584
and Russians, opens patent files to, 433
and women's suffrage amendment, 749
Roosevelt, Theodore, 253
Rosenberg, Julius and Ethel, 625
Rossiter, Clinton, on political principles of Founders, 4
Ruler's Law, 197
in British Empire, 46
chief characteristics of, 45
Declaration of Independence terminates, 46
definition of, 44
Founding Fathers on, 44-45
Moses and, 49
return to, would nullify revolution, 105
Rules Committee, procedures of the, 365-66
Rutledge, John
associate justice of the U.S. Supreme Court, 152
biographical summary of, 151-52
and the Continental Congress, 152
on debts of states, assumed by U.S., 656-57
on impeachment, 285
on Senators, citizenship requirement of, 310
on slaves, importation of, 649
and the Stamp Act Congress, 151
and voters, property requirement for, 268

S

Safety Appliance Act, 404
St. Clair, Arthur, 82
St. Leger, Barry
leads troops to Albany, 82
unable to assist Burgoyne, 83
Saratoga, Burgoyne surrenders at, 87
Savannah, battle of, 95
Schuyler, Philip, 72, 82-83
Scottish-Irish frontiersmen, fight Ferguson at King's Mountain, 100
Scrip, 114, 144. *See also* Paper money
Seal
Congress adopted, 33
official, formulated by Benjamin Franklin, 32
Searches and seizures, unreasonable, 702
Secession, threats of, 504
Second Amendment, 694-700
Secret Service, and jurisdiction over counterfeit cases, 428
Secretary of the Senate, 313
Secretary of the Treasury, 427
Sectionalism, 112
Secularism, 687
Security, national, 337, 551-52
Sedgwick, Theodore, 375, 480
on Congressmen voting themselves compensation, 342
Sedition laws, 689
Self-defense, right of, 504
Self-government
Clinton Rossiter on, 4
frightening prospects of, 47
of Israelites, 51, 53
voluntary, 194-95
Self-incrimination, compulsory, 706
Senate, 259-60, 291-92, 315. *See also* Congress
advantages of the, 193
appointed by state legislatures until Seventeenth Amendment, 746
appointments of, 556
and aristocracy, 356
in Articles of Confederation, no provision for, 258
bills, process of passing, 363-64
calendar, 365
chaplain of, 313
and checks and balances, 291
citizenship requirement of, 309-10
closure rule in, 367
committee chairmen of, 313
composition of, 294-95
consolidation, as guard against, 301
corruption in, 356
and disorderly behavior, punishment for, 334
division of, into three classes, 307
and electoral votes, 715
and expulsion of members, 335
filibuster in, 367
and funds, mutual agreements for, 361
hearings in, 367
and House revenue bills, 357
and impeachment, 314, 316, 459
and journal of proceedings, 336
leaders in, 296
and meeting at designated location, 340
officers of, chooses own, 313
parliamentarian of the, 313

President may call special session of, 560
and presidential appointments, confirms, 553, 558
political structure of the, 289
refuses to seat F. Smith, 331
to represent states as entities, 746
representation in, equal, 290-91, 650
represents states equally, 258
and Rhode Island, cuts off commercial relations with, 228
role of, 300-303
rules and proceedings of the, 334
secretary of, 313
sergeant at arms of, 313
structure of the, 290-91
and taxation, 357
term of office, 301-3
vacancies in the, 308, 747
veto power of, 295
and Vice President, chooses if no majority, 716
Vice President as presiding officer of, 311

Senators
age requirement of, 309
as agents for Union, 293
appointed by state legislatures, 293-301, 308, 746
campaign spending of, 323
citizenship requirement of, 309-10
civil offices, may not accept, 347-50
compensation of, 341-45
election of, 258, 290, 294, 307-8, 355, 746
election of, popular, 296, 330, 745
as électors, 526
and harassment suits, 346
and immunity from arrest, 346
majority constitutes a quorum, 331
people have right to elect, 746
qualifications of, 331
qualities needed in, 302, 310
right of newly elected, to assume offices in January, 750
role of, 295
selection of, 158
as state ambassadors, 260, 297-98
and state represented, must be an inhabitant of, 311
states can compel to cooperate, 355-56
term of office of, no limitations on, 301-3
term of service of, 304-6
and U.S. government, employment by, 350-51
voting record of, 306

Separation of church and state, 681-82

Separation of powers
horizontal, 186-87
vertical, 177, 183-86

Separatism, 770

Sergeant at Arms of the House of Representatives, 283

Sergeant at Arms of the Senate, 313

Seventeenth Amendment, 301, 713, 746-48
altered mixed form of government, 258
and election of Senators, 258, 290, 294, 308, 355
and states' rights, 258

Seventh Amendment, 710-12

Shannon, Albert, relates story of slavery, 729-37

Shays, Daniel, leads rebellion, 115

Shays's Rebellion, implications of, 115

Sherman, Roger
on abolition of slavery, 468
biographical summary of, 151
on coining money clause, 496
on Congress, annual sessions of, 329
and the Connecticut Assembly, 151
and the "Connecticut Compromise," 151
at the Constitutional Convention, 151
and the Continental Congress, 151
and Declaration of Independence committee, 26
on House, qualifications for candidate for, 272
on military appropriations, 445
on paper money, 496
on the President, appointment of, by the legislature, 521
on the President, enforced rotation of, 517
on the President, limited term of, 517
and representation, allocating, 160-61
on the Senate as a court of impeachments, 316
on Senators, popular election of, 296
on slavery versus abolition, 470
on states, creation of, 637
on treason applying only to United States, 623
on Vice President as presiding officer of the Senate, 311-12

Sherman Anti-Trust Act
and monopolies and "restraint of trade," made illegal, 214
outlaws monopolies and trusts, 404

Shute, Daniel, on religious test as qualification for office, 666-67

Signers of the Constitution, 670

Signing the Constitution, 162

Sixteenth Amendment, 738-43
provides for income tax, 738-43

Sixth Amendment, 707-9

Skelton, Martha Wayles, 21

Slavery, 728-37
abolition of, 465, 468-70
basis for assessing taxes on, 275
Congress may put tax on, 471
constitutional provision regarding, 634, 649
economic dependence on, 466
federal intervention in, 649
origin of, 467

religious leaders campaign against, 466
states which abolish, 469
Slaves
emancipation of, 466, 729
federal government may intervene in importation of, 466, 649
owners of, not to be paid for, 727
and state representation, 277
Small, William, 18, 19
Smilie, John, on extremes of government, 43
Smith, Adam
authors *The Wealth of Nations,* 61, 203, 216
and economics, Founders' ideas on, 202
and free-enterprise economics, 202
and governmental intervention in economy, 216, 217
and laissez-faire economics, 215-16
and private enterprise, 767
rediscovery of, 217
and test of abundance and cheapness, 215
and true wealth, 208
Smith, Frank, Senate refuses to seat, 331
Smith, Melancton
on money, government's appetite for, 375
and Rhode Island, criticism of, 124
Social Security Act, 389
Social welfare, Founders and, 390
Socialism, 215-16
Soldiers, quartering of, 700-701
South, British attacks on the, 76, 95-96
Southern states
agree to commerce clause, 467
and federal regulation of commerce, 399
Soviet Union, as greatest colonizing power in history, 445
Spaight, Richard Dobbs
on electors, 521, 527
on infidels in high office, 668
on separate jurisdiction of states, 85
Spain
declares war on Britain, 95
and east bank of Mississippi, controversy over, 112
enters alliances with Creek, Choctaw, and Cherokee, 112
expects U.S. to collapse, 112
secures Florida, Mississippi, and Alabama, 112
Speaker of the House, 282
in line of succession to President, 530
Speech, freedom of, 688-89, 722
Spooner, Lysander, 616
Springfield, Massachusetts, Shays's Rebellion takes place in, 115
Standard of living
Americans have highest, 211
Founders' formula for increasing, 208
Standard Oil Company
develops first trust, 212
launched "big business," 212
ordered by Supreme Court to dissolve, 214
Stansbury, Arthur J., 245
Stark, John, leads New Hampshire volunteers, 83
State
citizens of each, privileges and immunities of, 631
constitutions, 299, 662-63
and Congressmen, each, entitled to at least one, 280
governments, 298-300
as independent confederation, 492
judges, 662-63
legislatures, 295
and prohibition of alcohol, enforcement of, 748
records, 631
responsibility of a, 180-81
and Senate vacancies, 747
supremacy, 198-99, 491
trial to be held in, where crime committed, 620
and weights and measures, 427
State compact, 65
State Department. *See also* Foreign affairs
diplomatic corps of, subject to federal courts, 600, 607
on government as giver of gifts, 391
negotiates secret agreements, 254
State legislatures, 298-99, 451-52
amending Constitution by, 647
to appoint Senators, 293-301
have power to reverse Congress or courts, 256-57
scandals in, 746
State militias. *See also* Militia
officers of, appointment of, 562
and the right of people to keep and bear arms, 694
State of the Union report, 559
State supremacy, 198-99, 491
States
acts of, recognized by other states, 630
appeal, right of, 612
combinations of, danger of, 325-26
Confederation of, 65
and Congress, 123-25
debts of, 657
default of, in paying taxes during Revolutionary War, 378
disputes between, 68, 602-3
federal courts have jurisdiction over cases between, 602
and federal government, defense against, 242
and federal government dependent on, 640
and federal lands, 458-59
federal protection of, 501, 642

insurrections in, 643-44
internal affairs of, 605
limitations on, 67
and militia, 454
and money, Founders' position on, 421
and money or bills of credit, prohibited from issuing, 493
new, Congress cannot create, within existing states, 636-37
and paper money, issuing, 117
powers reserved to the, 659-60, 712-13
republican form of government in, must be preserved, 639
as republican governments, forms of, 641
requisitions from, 373-74
restraints on, 491-504
and scrip, issuing, 114
and Senators, as ambassadors of, 298
and slaves, right of, to continue importing, 466
sovereignty of, 67, 642
suits against, 602-3
and taxation of other states, 409
and territories, formed from, 635
and treaties or alliances, 492
trials of, 603
States' rights, 182-86, 459, 643
and judiciary, threat of, 605
loss of, 255, 256, 407-8
and Senate, initially protected by, 293-301
since Seventeenth Amendment, deterioration of, 258
Statutes, Blackstone on, 354-55
"Stay law," invoked by state after Revolutionary War, 114
Steel, price controls on, 209-10
Steuben, Baron von, 91
Story, Joseph, on excluding government from religious questions, 680
Strong, Caleb
on the Connecticut Compromise, 275
on courts' powers, 595
on need for federal town, 456
Subcommittees in Congress, 364
Subsidies to farmers, 216
Suffrage, right of. *See* Vote
Sugar Trust Case, 406
Sullivan, John, 95
Sumner, Increase
on *habeas corpus*, 474
on national debt, 380
on state legislatures, 298-99
Sunset law, 743
Supply and demand, 215
Supremacy clause of the Constitution, 571, 575, 657
Supreme Court, 569-81. *See also* Judicial system; Judiciary
administrative duties of, 255
appellate jurisdiction of the, 612-13
on armies, raising and supporting, 444
and Bible reading in public schools, 687
and civil rights, expanding federal, to state cases, 577
and commerce, definition of, 401-2
and commerce clause, as all-inclusive, 400
and common-law jury, 256
and Congress, interprets acts of, 611
and the Constitution, guardian of, 571
and the Constitution, interpretation of, 576-77
criticism of the, 575
and federal court system, 229
and federal court system, as part of, 583-607
on grants-in aid, 389
and *habeas corpus*, 473
and Hamiltonian doctrine, 388
and Hours of Service Act, 404
internal operations of the, 579-81
judicial power vested in, 584
and judicial review, 570-77, 597-98
and judicial supremacy, defense of, 575
justices, number of, 584
and the "Lord's Prayer," 687
on naturalization, 412
original jurisdiction of, 607
on *parens patriae*, regarding Indians, 411
and prayers in schools, 687
and public policy, establishment of, 255
qualifications of a justice of, 577
and "regulate," definition of, 402
and regulatory power over gas and oil, 403
and "released time" for religious education, 686
on religion, freedom of, 680
and religion in schools, 685-86
and reversal of decisions, 255
and separation of church and state, 681-82, 685
and separation of powers, 254
and Standard Oil, 214
and state powers, 713
and states, inspection rights of, 502
and taxation, 379
unconstitutional interpretations of the, 577
and U.S. Steel allowed to remain a holding company, 214
Supreme Court Retirement Act, 586
Supreme law of the land, defined, 657
Suspension of rule, 366
Sweden, and economic success, 220

T

Taney, Roger B., on interpreting the Constitution, 685
Tariffs, 400
Tarleton, Banastre
defeated by Daniel Morgan, 101

defeats Sumter, 99
and unlawful excesses against prisoners, 97
Tax
on imported persons, 471
in proportion to population, 478
poll, 477-78
power to, editorial summary on, 378
power to, not provided by Articles of Confederation, 69
states' power to, 377-78
Tax courts, 584
Taxation and representation, 276-77, 355-56, 378
Taxes, 372-79, 477-83, 485, 738-39
apportioned according to population, 275-77, 479
census to determine, 278
collecting, 481
Constitution and levying, 378
direct, 372-73, 378, 478, 480-81
discriminatory, 392
for emergencies, 116
excise, 373, 376-77, 480
on exports, 482-83
on imported persons, 471
"in kind," 117
income, 738-43
indirect, 372, 378, 478
on land and property, 276, 479
poll, 114, 447-48, 478, 745, 758
and scrip, payment in, 114
and Second Continental Congress, 116
and Senate, 357
and slave population, 275
and states, imposed against, 372
Supreme Court regulates, 379
for war, 372
Technology, development of modern, 12
Tenth Amendment, 712-13
Tenure of Office Act, 285
Territories
claims of, constitutional provision to protect, 639
Congress shall make all rules and regulations regarding, 637
states formulated from 635
Terrorism, two years of, 94
Texas, admitted to Union, 635-36
Thacher, Thomas
on British system, 169
on lawlessness in states, 128-29
on money owed to Massachussetts for war, 127
Thanes, 56
"The Vices of the Political System of the United States," 137
Third Amendment, 700-701
Thirteenth Amendment, 467, 720-21
Thomas, Ivor, and *The Socialist Tragedy,* 217
Three-fifths compromise, 275-76, 277
Thurmond, Strom, 367
Tithing, 56
Titles and emoluments, 487-88
Tocqueville, Alexis de
on America as the hope of the world, 8
on American political system, perpetuation of, 245
authors *Democracy in America,* 245
on Constitution, knowledge of, 245
on religion in America, 678-79
Tories
assist British in Southern campaign, 96
and atrocities to prisoners, 97
forces of, in the South, 95
volunteers among, mobilized by Benedict Arnold, 101
Tracy, Destutt de, on paper money, 116
Trade conference at Annapolis, 135
Trademarks, 433
Transportation, regulation of, 403. *See also* Commerce
Transportation Revolution, 2
Treason
attainder of, prohibited, 626
Congress may remove from office persons found guilty of, 546
and Constitution, only crime defined in, 621, 623
conviction of, requires two witnesses or confession, 624
definition of, 621-22
federal officials and, 547
penalty for, 31
Treaties, 552-53, 658-61
commercial, 550-51
as contracts, 661
federal courts have jurisdiction over, 598-99
and House of Representatives, concurrence of, 548
President shall have power to make, 548-53
Senate ratification of, 254, 550
states' violations of, 598-99
as supreme law, 660
Treaty of Ryswick, 434
Treaty of peace, between U.S. and British, 107
Trenton, battle at, 79-80
Trial
to be held in state where crime is committed, 620
right to a speedy and public, 707
Trial by jury, 614-20, 707. *See also* Jury
legal right to a, 617
right of, in suits of common law, 710
Tribunals, inferior, 614
Trop v. Dulles, and Supreme Court ruling on, 413
Trusts, 212-15. *See also* Sherman Anti-Trust Act

Truths, self-evident, 28
Turner, Charles
on new Constitution, need for, 129-30
on paper money, 495
Turner, Sharon
and history of Anglo-Saxons, 54
summarizes Anglo-Saxon laws, 56
Tweed, Alexander, 130
Twelfth Amendment, 714-15
Twentieth Amendment
and congressional determination of President, 753
and inaugural date, 538
and "lame duck" Congresses, 750
and presidential terms of office, dates for, 751
requires Congress to meet at least once a year, 751
and succession of office with disabled President, 752
Twenty-fifth Amendment, 530, 758-60
and replacement of a Vice President, 519
and succession of President and Vice President, 758
Twenty-first Amendment, repeals Eighteenth Amendment, 754-55
Twenty-fourth Amendment, eliminates poll tax, 478, 758
Twenty-second Amendment, 755-56
Twenty-seventh Amendment, 764
Twenty-sixth Amendment, 323, 762-63
Twenty-third Amendment, 757
Tyler, Alexander, on democracy, 264-65
Tyranny, 301
Founders' views regarding, 42
Madison's definition of, 44

U

Unalienable rights, 28
Unanimous consent, 366
Unconstitutional laws, 252-53, 597
Unemployment, after Revolutionary War, 114
Union, as a goal of the Constitution, 235-39
Union Calendar for appropriation bills, 365
Unitary republic, 167, 265
United Nations, and World Court, 436
United Nations Treaty, 549
United States. *See also* America
and British, peace treaty between, 107
collapse of, expected after Revolutionary War, 112
and commerce, pioneer in free flow of, 401
court of claims to hear cases against, 584
as a democratic republic, 264
and federal courts, to decide questions concerning law of, 596
a government of the people, 229
named, 67
as a party in legal issues, 601
and the Monroe Doctrine, 769
richest industrial nation in world, 211
U.S. Bank, 424, 654
U.S. Steel, to remain a holding company, 214
U.S. v. United States Steel Corp., 214
Unlawful assemblies, and Shays's Rebellion, 115
Unreasonable searches and seizures, 702
Usurpation, acts of, 616
Utah
gives women right to vote in 1896, 749
percentage of federal lands, 459

V

Vacancies
in the House, 281
in the Senate, 308, 747
Valley Forge
Baron von Steuben trains soldiers at, 91
crisis passes at, 92
tragedy of, 90-92
Vanderbilt, Cornelius, 211-12
Vertical separation of powers, 177, 183-86
Veto, 362-63
court's power of, 595
House and Senate can override, 357
pocket, 368
power of Senate, 295
President's power to, 357, 361
state power to, in Congress, 123
Vice President
absence of, in Senate, 314
as acting President if Cabinet agrees, 759
appointment by majority of House and Senate, 758
Congress may provide for office of, 530
impeachment of, 563
and impeachments, judge of, 315
newly elected, to assume office in January, 751
qualifications of, 414, 717
removal from office of, 563
replacement of a, 519
replaces President if he dies or resigns, 758
role of, 312
and Senate, presiding officer of, 311-12
Senate may choose, if no majority, 716
succession of, to Presidency, 529
term of office of, 518-19
votes for, to be cast on same day, 327
voting rights of, in Senate, 312
Vices
outlawed by society, 207
"regulated" by communities, 207
Vietnam War, no declaration of war for, 440
Virgin Islands, acquired by U.S., 636

Virginia
constitution of, drafted by Thomas Jefferson, 25, 37
and debts after Revolutionary War, 114
frontiersmen of, fight British, 100
as model state, 34
reforms in, initiated by Jefferson, 37
represented on seal of the United States, 32
state constitution proposed for, 47
and trade conference, proposes a, 134
Virginia Plan. *See* Virginia Resolves
Virginia Resolves, 154-58, 301
Volstead Act, provided for enforcement of Eighteenth Amendment, 754
von Breyman, Heinrich, 85
von Steuben, Baron, 91
Vote, 640
and District of Columbia, residents of, 756
and eighteen-year-olds, 745, 762
and poll tax, 757
and race, color, or servitude, 728
and Representatives, 267-68
and universal suffrage, 725
and women, 749-50
Vote, recorded
in House of Representatives, 338-39
in Senate, 338
Voting age, changed by Twenty-sixth Amendment, 323
Voting machines, become legally acceptable, 323
Voting record, of Senator, 306

W

War, 236, 382, 441-42
Congress's authority to declare, 440, 493
cost of, under Articles of Confederation, 67
declarations of, instances of, 440
and direct taxes, 372
escaping, means of, 2
Franklin on futility of, 442
vote of states required to declare, under Articles of Confederation, 68
War powers, 439-54. *See also* Defense, national
delegated to President, 540
and presidential powers, expanding, 253
suspension of President's, 360
Warrants, supported by oath, 703
Warren, Earl
Chief Justice of the Supreme Court, 255
increases judicial activism, 255
Warren court. *See also* Supreme Court
invades domains of states, 255, 256
and police procedure, standards of, 256
reverses previous Supreme Court decision, 255
and state health standards, 256

Washington, George
on alliances with foreign nations, permanent, 773
and American government, urges strengthening, 133
and annual address to Congress, fifth, 385-86
appointments of, 229, 230
and Articles of Confederation, 66, 70-72
on Articles of Confederation, weakness under, 118
and Benedict Arnold, 99
and Brandywine Creek, battle at, 88
and British surrender, 104
and Camden, South Carolina, battle at, 98
and Canada, ordered to send troops into, 76
and Charles Lee, offers him command of troops, 92
as commander in chief of the Continental Army, 70
and Constitution, miracle of the, 5
at Constitutional Convention, 136, 160
and constitutional convention, pleads for a, 106
Farewell Address of, 771-73
and Germantown, battle at, 89
on government, extremes of, 43
on government as a force, 570
inaugurated in New York City, 229
inauguration of, borrows money to attend, 229
on indispensability of religion and morality, 676
Jefferson on, 106
and king of America, asked to be, 42-43, 134
and Monmouth, battle at, 92
and Morristown, New Jersey, remains in, 81
and Morristown, New Jersey, winter quarters at, 96
on national defense, 384
and need for a miracle, 111
and New York, battle at, 76
and New York, feigns attack on, 102-3
and Newburgh, New York, speech at, 106
and patent letter, signs first, 432
as President, elected unanimously, 229
as President, first to take oath of office, 538
as President, refuses compensation, 531
as President, refuses third term, 755
and Princeton, battle at, 80
as public servant, example of, 345
on ratification of Constitution, 154
on religion and morality, 676
on United States, prosperity in, 655
and U.S. army, creation of, 230
at Valley Forge, 89
in war, abandoned by leaders of Confederation, 96
in war, authorized to commandeer supplies, 89

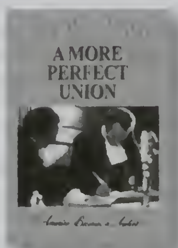
in war, and French plan to bring ships to Chesapeake Bay, 102
in war, and mutiny at Trenton, 101
after war, bids officers farewell at Fraunces' Tavern, 108
in war, British defenses, 103
in war, camp on the Hudson, 114
in war, confiscates supplies for armies, 96
in war, holds council, 92
in war, holds meeting of officers to review grievances, 106
in war, officers vote unanimously to support, 106
after war, resigns commission, 108
in war, safeguards West Point, 99
in war, surveys British defenses, 103
Washington (state), percentage of federal lands, 459
Washington, D.C. *See* District of Columbia
Wealth, Adam Smith's definition of true, 208
"Wealth of Nations," 206, 216
Webb-Kenyon Act, 748
Webster, Daniel, on religious instruction and authority, 688
Weights and measures, 426-27
Welfare. *See* General welfare; General welfare clause
Welfare clause, a restriction of power, 244, 388
Welfare state, 219-20
West Germany, and post-World War II, 220
West Point, safeguarded by Washington, 99
White House administrative agencies, 543
White House Office, 543
Wilkinson, James, 112
Williams, James, 126
Williamson, Hugh
on maturity of a Senator, 310
on popular election of President, 321
on ratification of Constitution, 470
Wilson, James
on admiralty jurisdiction, 600
as Advocate-General for France, 149
on America, world's expectations for, 174
on America becoming a nation, 173-74
and "ancient principles," 41
on annual accounting publication, 486
on army, standing, 445
on Articles of Confederation, weaknesses of, 123
as associate justice of U.S. Supreme Court, 149
and Bank of North America, 149
biographical summary of, 148-49
and the Board of War, 149
on bribery and corruption, 350-51
on the British system, defects of, 168
on coining money clause, 496
on Congress, annual session of, 330
on Congress, consequences of a weak, 125
on congressional right to intervene with state procedures, 323
and Constitution, principal defender of the, 149
on constitutional money, 420
and the Continental Congress, 148
on controversies between the nation and its citizens, 601
on courts being created or abolished as needed, 434
on the electoral college, 526
on electors, 522-23, 527
on executive, a single, 511-13
on government, extremes of, 43
on government, free, compared to a pyramid, 177
on government for the world, 194
on import duties, 375
on judges, appointment of, 555
on judicial independence, 586-87
on laws, unconstitutional, 597
on legislators holding office, 350
on legislatures declaring effect of legislative acts, 631
on militias, 451
on money, constitutional, 420
on money, paper, 494-95
on "necessary and proper" clause, 460, 461
on pardoning power, 545, 546
at the Pennsylvania provincial convention, 148
on people as the source of power, 176
on right of people to know, 337
on self-government, 194-95
on the Senate, 304
on the Senate, composition of, 294-95
on Senators, election of, 307-8, 746
on separation of powers, vertical, 184-85
on Shays's Rebellion, 128
on slavery, power of Congress to abolish, 469
on state governments, 298, 300
on state legislatures, 295
on states' defense against federal government, 242
on states' rights, federal judiciary as a threat to, 605
on states' rights, federal usurpation of, 185
on suffrage, 640
on taxes, excise, 376
on treason, 622-23
on treaties, ratification of, 550
on treaties, states' violations of, 598-99
on treaties as contracts, 661
on trial by jury, 618, 619
on Virginia Plan as compared to New Jersey Plan, 158
Wilson, Woodrow, 253

Witen, 56
Witena-gemot, 56
Witherspoon, James, as Madison's mentor, 140
Witness against self, protection against, 705
Witnesses, 709
Witnesses, two, required for conviction of treason, 624
Wolcott, Oliver
on Representatives as guardians, 250
on Senate representing states, 260
Women's suffrage amendment, 745, 749-50
Work, 204, 207
Working class, 207
World Court, 436
World government, 194
World War I, Woodrow Wilson expands power of President during, 253
World War II
and secret State Department agreements, 254
U.S. diplomatic mistake after, 445
Writs of assistance, 703
Wyoming
gives women voting rights, 749
percentage of federal lands, 459
Wythe, George
and "ancient principles," 41
biographical summary of, 146-48
as chancellor of the State of Virginia, 146
at Constitutional Convention, prepares rules, 147
and the Continental Congress, 146
Jefferson studies with, 19
as professor of law in the United States, the first, 147
and slaves, advocates emancipation of, 147
and Stamp Act, 147

Y

Yalta Agreement, 255
Yinglings. *See* Anglo-Saxons
Yorktown
battle of, 102-5
becomes naval base, 101
surrender of British at, 104

Also available from National Center for Constitutional Studies



A More Perfect Union (DVD)
America Becomes a Nation
Runtime: 1 hour 52 minutes
$19.95
Visit *nccs.net*

A MORE PERFECT UNION: America Becomes A Nation is the first comprehensive re-creation of those stirring debates during the sweltering summer of 1787. Filmed on location at Independence Hall and other historical sites, it dramatically chronicles how America became a nation and those underlying principles that guard our freedoms today.

Officially recognized by the Commission on the Bicentennial of the United States Constitution, who cited the film as being "of exceptional merit." It is used by thousands of educational institutions across America to teach the Constitution.

The Constitution of the United States
and Declaration of Independence
52 pages, pocket edition.
$1.00
Bulk discount available at *nccs.net*

This Constitution was proofed word for word against the original Constitution housed in the Archives in Washington, D.C.

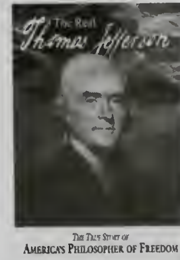
It is identical in spelling, capitalization and punctuation and is sized in accordance with one produced by President Thomas Jefferson.

The Real George Washington
The True Story of America's Most Indispensable Man
928 pages, 119 illustrations.
$24.95
Visit *nccs.net*

Rather than focus on the interpretations of historians, this unique book tells much of the true story of George Washington's life in his own words. His was the dominant personality in three of the most critical events in the founding of America: the Revolutionary War, the Constitutional Convention, and the first national administration.

The second part of this book brings together the most important and insightful passages from Washington's writings, conveniently arranged by subject.

Also available from National Center for Constitutional Studies



The Real Thomas Jefferson
The True Story of America's Philosopher of Freedom
709 pages, 58 illustrations.
$22.95
Visit *nccs.net*

The Real Thomas Jefferson is the true story of America's Philosopher of Freedom. This book lets you meet the man as he really was—rather than as interpreted by historians—as much of his exciting story is told in his own words.

Part II of this book is a compilation of the most salient and insightful passages from Jefferson's writings, listed by subject.

The Real Benjamin Franklin
The True Story of America's Greatest Diplomat
504 pages, 42 illustrations.
$19.95
Visit *nccs.net*

Meet the real Benjamin Franklin and the true story of America's greatest diplomat. Learn about the businessman, the renowned scientist, the loyal patriot and the man of deep religious convictions—not as historians characterize him—but by letting him tell much of his dramatic story in his own words.

The second portion of this book brings together the most timeless and insightful passages from Franklin's writings, arranged topically.

The 5000 Year Leap
A Miracle That Changed the World
337 pages
$19.95
Bulk discount available at *nccs.net*

Discover the 28 Principles of Freedom our Founding Fathers said must be understood and perpetuated by every people who desire peace, prosperity, and freedom.

Learn how adherence to these beliefs during the past 200 years has brought about more progress than was made in the previous 5,000 years.

THE MAKING OF AMERICA

Discover how the Founders wove the Principles of Liberty into the Constitution

President Ronald Reagan
"The National Center for Constitutional Studies...is doing a fine public service in educating Americans about the principles of the Constitution."

Ronald M. Mann, Deputy Director – Commission on the Bicentennial of the U.S. Constitution
"It is hoped that this publication will awaken a desire within the inhabitants of this nation to restore to the Constitution the eminence given it by our Founders, that we may as a nation be blessed with continued freedom, security and happiness."

Leonard A. Leo – U.S. Senate Subcommittee on the Constitution
"There are few works that actually attempt to find the Founders' purpose for each phrase of the Constitution. This well-organized approach...provides a wealth of material on the Founding Fathers' intentions when drafting the American Constitution. There is no other contemporary source that offers such a thorough compilation of statements by the Framers relating to constitutional interpretation."

George Washington
"The power under the Constitution will always be in the people. It is entrusted for certain defined purposes, and for a certain limited period, to representatives of their own choosing; and whenever it is executed contrary to their interest, or not agreeable to their wishes, their servants can, and undoubtedly will, be recalled."

Thomas Jefferson
"I know of no safe depository of the ultimate powers of [a] society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education.... In questions of power, then, let not more be said of confidence in man, but bind him down from mischief by the chains of the Constitution."

NATIONAL CENTER FOR CONSTITUTIONAL STUDIES
www.nccs.net

$29.95